

02:46PM

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 JOSEPH BONGIOVANNI,

7 Defendant.

Case No. 1:19-cr-227
(LJV)

September 13, 2024

8 TRANSCRIPT EXCERPT - EXAMINATION OF PROTECTED WITNESS 6, R.A.
9 BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

10 APPEARANCES:

TRINI E. ROSS, UNITED STATES ATTORNEY
BY: JOSEPH M. TRIPI, ESQ.
NICHOLAS T. COOPER, ESQ.
CASEY L. CHALBECK, ESQ.

12 Assistant United States Attorneys
13 Federal Centre, 138 Delaware Avenue
Buffalo, New York 14202
14 For the Plaintiff

15 SINGER LEGAL PLLC

BY: ROBERT CHARLES SINGER, ESQ.
80 East Spring Street
16 Williamsville, New York 14221
And

17 LAW OFFICES OF PARKER ROY MacKAY

BY: PARKER ROY MacKAY, ESQ.
3110 Delaware Avenue
18 Kenmore, New York 14217

And

19 OSBORN, REED & BURKE, LLP

20 BY: JOHN J. GILSENAN, ESQ.
120 Allens Creek Road
21 Rochester, New York 14618
For the Defendant

22 PRESENT:

BRIAN A. BURNS, FBI Special Agent
23 MARILYN K. HALLIDAY, HSI Special Agent
24 KAREN A. CHAMPOUX, USA Paralegal

25 LAW CLERK:

REBECCA FABIAN IZZO, ESQ.

COURT DEPUTY CLERK: COLLEEN M. DEMMA

COURT REPORTER: ANN MEISSNER SAWYER, FCRR, RPR, CRR
Robert H. Jackson Federal Courthouse
2 Niagara Square
Buffalo, New York 14202
Ann_Sawyer@nywd.uscourts.gov

* * * * *

(Excerpt commenced at 2:46 p.m.)

(Jury is present.)

THE COURT: The government can call its next witness.

MR. COOPER: The government calls R.A., Judge.

R. A., after being duly called and sworn, testified as follows:

MR. COOPER: May I inquire, Judge?

THE COURT: You may.

DIRECT EXAMINATION BY MR. COOPER:

Q. Good afternoon, ma'am.

A. Good afternoon.

Q. Would you introduce yourself to the jury?

A. My name is R.A.

Q. And how old are you, Ms. R.A.?

A. I am 42.

Q. Where did you grow up at?

02:48PM

1 A. Pendleton, New York.

02:48PM

2 Q. And can you tell the jury a little bit about your

02:48PM

3 educational background?

02:48PM

4 A. Yes. I graduated from Starpoint High School. I have a

02:49PM

5 degree from University of Buffalo in behavioral science. And

02:49PM

6 I am currently in graduate school for clinical mental health

02:49PM

7 counseling.

02:49PM

8 Q. Now, when you graduated from high school, did you start

02:49PM

9 working at that point, or did you go to school?

02:49PM

10 A. I went to school.

02:49PM

11 Q. Okay. And where did you go to school initially after

02:49PM

12 high school?

02:49PM

13 A. Syracuse University.

02:49PM

14 Q. Okay. And did you finish up your education at Syracuse

02:49PM

15 University at that time?

02:49PM

16 A. No.

02:49PM

17 Q. Okay. What happened?

02:49PM

18 A. I kind of took the wrong path, and started working in the

02:49PM

19 bar business.

02:49PM

20 Q. Okay. Did you remain working in the bar business --

02:49PM

21 first of all, what age did that start when you started

02:49PM

22 working at bars?

02:49PM

23 A. About 19, 20.

02:49PM

24 Q. And did you start drinking around that time?

02:49PM

25 A. Yes.

02:49PM 1 Q. Did you start using marijuana?

02:49PM 2 A. Yes.

02:49PM 3 Q. Okay. And did that kind take your life down a different

02:49PM 4 path than you had initially expected?

02:49PM 5 A. Absolutely.

02:49PM 6 Q. Okay. After you started working in the bar business, did

02:49PM 7 you start working in exotic dancing?

02:50PM 8 A. Yes.

02:50PM 9 Q. At some point in your life, did alcohol use become a

02:50PM 10 problem for you?

02:50PM 11 A. Yes.

02:50PM 12 Q. Okay. About what age was that?

02:50PM 13 A. I would have to say around 19 and 20, it started

02:50PM 14 escalating.

02:50PM 15 Q. Okay. And was in something you struggled with for a

02:50PM 16 number of years?

02:50PM 17 A. Absolutely.

02:50PM 18 Q. Is it something that is a problem the same way for you

02:50PM 19 today?

02:50PM 20 A. No.

02:50PM 21 Q. When's the last time you drank alcohol?

02:50PM 22 A. January 5th, 2017.

02:50PM 23 Q. What's the last time you used drugs?

02:50PM 24 A. 2016.

02:50PM 25 Q. From that age, 19 or 20, that you told us about a moment

02:50PM 1 ago, did the alcohol use and drug use progress?

02:50PM 2 A. Yes.

02:50PM 3 Q. Did it get worse over time?

02:50PM 4 A. Yes.

02:50PM 5 Q. What kind of drugs did you use during that time in your
02:50PM 6 life?

02:50PM 7 A. I used a lot of drugs. I used cocaine, heroin, ecstasy,
02:50PM 8 pretty much anything I could get my hands on.

02:50PM 9 Q. When you -- when you left Syracuse, you said you started
02:51PM 10 working at bars; is that right?

02:51PM 11 A. Yes.

02:51PM 12 Q. What bars were you working at?

02:51PM 13 A. Mademoiselle's, Rick's Tally-Ho, Colonie.

02:51PM 14 Q. Okay. And Mademoiselle's, is that a bar that also offers
02:51PM 15 exotic dancing there?

02:51PM 16 A. Yes.

02:51PM 17 Q. And how about Rick's Tally-Ho?

02:51PM 18 A. Yes.

02:51PM 19 Q. And Colonie, is that an exotic dancing club?

02:51PM 20 A. Yes.

02:51PM 21 Q. Can you describe for the jury how working in that
02:51PM 22 industry in strip clubs impacted your drug and alcohol use?

02:51PM 23 A. Of course. Usually, it's very difficult to work a job
02:51PM 24 like that sober. There's a -- it's a very hostile
02:51PM 25 environment. You're working with other exotic dancers, men,

02:51PM 1 you don't know who they are or where they're from. And drug
02:51PM 2 use is very common.

02:51PM 3 Q. Did working in that industry cause your drug use to
02:51PM 4 escalate?

02:51PM 5 A. Yes.

02:51PM 6 Q. Was there a time when you were working in that exotic
02:52PM 7 dancing industry when you began using cocaine basically every
02:52PM 8 day that you worked?

02:52PM 9 A. Yes.

02:52PM 10 Q. And at some point, did you switch from working as a
02:52PM 11 bartender to working as a dancer in those clubs?

02:52PM 12 A. Yes.

02:52PM 13 Q. What's the total timeframe that you worked in that
02:52PM 14 industry? From what age to what age?

02:52PM 15 A. I would have to say from 19 to about 22.

02:52PM 16 Q. Okay. And would that be sometime around 2004, 2005 when
02:52PM 17 you were 22?

02:52PM 18 A. Yes.

02:52PM 19 Q. Okay. Did there come a time when you met a person by the
02:52PM 20 name of Craig Border?

02:52PM 21 A. Yes.

02:52PM 22 Q. Was there a time in your life when Craig Border was a
02:52PM 23 boyfriend of yours?

02:52PM 24 A. He was someone I dated.

02:52PM 25 Q. How long did you date Craig Border for?

02:52PM 1 A. Maybe to two or three months.

02:52PM 2 Q. And during the two or three months that you were dating

02:53PM 3 Craig Border, I'm not trying to embarrass you, did Craig

02:53PM 4 Border have some photographs of you in some lingerie or some

02:53PM 5 revealing clothing?

02:53PM 6 A. Yes.

02:53PM 7 Q. Did you know that he had those photos of you?

02:53PM 8 A. I wasn't sure if I knew he had photos, but I definitely

02:53PM 9 took the photos --

02:53PM 10 Q. Okay.

02:53PM 11 A. -- or, he took the photos.

02:53PM 12 Q. Okay. Let me try to --

02:53PM 13 A. Okay.

02:53PM 14 Q. You were aware at some time during your two- or

02:53PM 15 three-month relationship with Craig Border that he took some

02:53PM 16 pictures of you in some lingerie or some kind of outfit?

02:53PM 17 A. Yes.

02:53PM 18 Q. Yeah?

02:53PM 19 A. Yes.

02:53PM 20 Q. Did there -- we're going to come back to that in a

02:53PM 21 minute. Did there come a time when you met an individual

02:53PM 22 named Peter Gerace?

02:53PM 23 A. Yes.

02:53PM 24 Q. How did you meet that person?

02:53PM 25 A. I met him at Mademoiselle's, and I also had met him at

02:53PM 1 his restaurant at the time.

02:53PM 2 Q. Okay. And what restaurant was that?

02:53PM 3 A. It was called Pietro's.

02:53PM 4 Q. When you met him at Mademoiselle's, was that a time when
02:53PM 5 you were working there?

02:53PM 6 A. Yes.

02:53PM 7 Q. Was he working there at that time?

02:53PM 8 A. No.

02:53PM 9 Q. Was he a patron when you met him?

02:53PM 10 A. Yes.

02:54PM 11 Q. Okay. And did you develop or eventually develop a
02:54PM 12 relationship with Peter Gerace?

02:54PM 13 A. Yes.

02:54PM 14 Q. Can you describe that for the jury?

02:54PM 15 A. Yes. I eventually married him, and we had a child
02:54PM 16 together.

02:54PM 17 Q. What was the period of time from when you first met Peter
02:54PM 18 Gerace at Mademoiselle's to when you began a relationship
02:54PM 19 with him?

02:54PM 20 A. It really progressed very quickly. Probably within a
02:54PM 21 matter of two weeks.

02:54PM 22 Q. Okay. And eventually you said that you and Peter had a
02:54PM 23 child together?

02:54PM 24 A. Yes.

02:54PM 25 Q. What year was that that you had a child?

02:54PM

1 A. 2006.

02:54PM

2 Q. In those couple months -- I'm going to withdraw that.

02:54PM

3 Do you remember what year you first met Peter?

02:54PM

4 A. 2004, 2005.

02:54PM

5 Q. Okay. And then by about a year later, give or take, you

02:54PM

6 guys had a child together?

02:54PM

7 A. Yes.

02:54PM

8 Q. Okay. During the period of months while you were dating

02:55PM

9 Peter but before you had a child together, were you guys

02:55PM

10 living together?

02:55PM

11 A. Yes.

02:55PM

12 Q. Did you socialize together?

02:55PM

13 A. Yes.

02:55PM

14 Q. Did you go out with other people and hang out?

02:55PM

15 A. Yes.

02:55PM

16 Q. Did you get to know some of Peter's friends?

02:55PM

17 A. Yes.

02:55PM

18 Q. Now you told the jury a few moments ago that in that age

02:55PM

19 range of, like, 19 to 22, cocaine use and alcohol use had

02:55PM

20 become a problem for you; is that right?

02:55PM

21 A. Yes.

02:55PM

22 Q. Did something cause your cocaine use to drop off pretty

02:55PM

23 significantly at one point?

02:55PM

24 A. Yes, I became pregnant.

02:55PM

25 Q. Okay. And did that cause you to stop going out and

02:55PM 1 partying with cocaine or using it at work?

02:55PM 2 A. Yes, I stopped using completely.

02:55PM 3 Q. Do you know an individual by the name of Joe Bongiovanni?

02:55PM 4 A. Yes.

02:55PM 5 Q. How do you know that person?

02:55PM 6 A. He was friends with Peter.

02:55PM 7 Q. When did you first meet Joe Bongiovanni?

02:55PM 8 A. I met him, I think, either -- probably 2004.

02:55PM 9 Q. Did you meet him by yourself, or were you with someone?

02:55PM 10 A. I was with Peter.

02:56PM 11 Q. And did Peter introduce you to Joe?

02:56PM 12 A. Yes.

02:56PM 13 Q. What did he say?

02:56PM 14 A. This is my friend Joe.

02:56PM 15 Q. Was that the only time that you remember meeting him?

02:56PM 16 A. No.

02:56PM 17 Q. Okay. Have you seen him and socialized with him at

02:56PM 18 different places other than just SoHo?

02:56PM 19 A. Yes.

02:56PM 20 Q. Can you describe some of the things that you did with

02:56PM 21 Peter and Joe Bongiovanni?

02:56PM 22 A. We went to dinner. We went on a trip. So, I don't know,

02:56PM 23 we did kind of socialization things.

02:56PM 24 Q. Okay. Where did you go on a trip together?

02:56PM 25 A. We went to Ellicottville.

02:56PM 1 Q. What's Ellicottville?

02:56PM 2 A. It's, like, a ski country with shops and bars. It's
02:56PM 3 cute, quaint town.

02:56PM 4 Q. Okay. And was that trip to Ellicottville with Peter and
02:56PM 5 Joe, was that something that was planned in advance?

02:56PM 6 A. Yes.

02:56PM 7 Q. Who else was on that trip, do you remember?

02:56PM 8 A. Joe, me, Peter, and his girlfriend at the time, I don't
02:56PM 9 recall her name.

02:56PM 10 Q. Whose girlfriend?

02:56PM 11 A. Joe's girlfriend.

02:56PM 12 Q. Okay. So it was the four of you?

02:56PM 13 A. Yes.

02:56PM 14 **MR. COOPER:** Ms. Champoux, can we pull up what's
02:57PM 15 already in evidence as Government Exhibit 421 -- or, 426-1, I
02:57PM 16 apologize. You can put that up for everybody. Thank you.

02:57PM 17 **BY MR. COOPER:**

02:57PM 18 Q. Do you see the picture on your screen?

02:57PM 19 A. Yes.

02:57PM 20 Q. You have a screen right there, too.

02:57PM 21 A. Oh, right there. Thank you.

02:57PM 22 Q. Do you see that picture?

02:57PM 23 A. Yes.

02:57PM 24 Q. Who's in the red shirt right there?

02:57PM 25 A. That's me.

02:57PM 1 Q. And to the right side of the photograph in the green
02:57PM 2 shirt, who's that?
02:57PM 3 A. Peter.
02:57PM 4 Q. And all the way on the left in the burgundy shirt, who's
02:57PM 5 that?
02:57PM 6 A. Joe.
02:57PM 7 Q. And in the shirt, the cream-colored shirt or white shirt,
02:57PM 8 who's that?
02:57PM 9 A. His girlfriend at the time.
02:57PM 10 Q. And do you recall her name as you sit here today?
02:57PM 11 A. No.
02:57PM 12 Q. Is that the same group of four people that went out to
02:57PM 13 Ellicottville together?
02:57PM 14 A. Yes.
02:57PM 15 Q. And is that around the same time generally?
02:57PM 16 A. Yes.
02:57PM 17 Q. Do you remember this night in particular?
02:57PM 18 A. Yes.
02:57PM 19 Q. What was this night about?
02:57PM 20 A. We went out to dinner, I think we had some drinks. I
02:57PM 21 think we were at a bar called Balloons.
02:58PM 22 Q. And was that a planned event?
02:58PM 23 A. Yes.
02:58PM 24 Q. Did there come a time when you learned what Joe --
02:58PM 25 Peter's friend Joe Bongiovanni did for work?

02:58PM 1 A. Yes.

02:58PM 2 Q. Okay. And what was that?

02:58PM 3 A. I -- well, Peter told me that he worked for the DEA.

02:58PM 4 Q. Can you describe for this jury how you learned, like, the
02:58PM 5 context of how you learned that Joe Bongiovanni worked for
02:58PM 6 the DEA?

02:58PM 7 A. I guess what had happened was -- was Peter had came up to
02:58PM 8 me and said that he -- or, Joe had seen --

02:58PM 9 **MR. SINGER:** Objection, hearsay.

02:58PM 10 **MR. COOPER:** Judge, can we come up?

02:58PM 11 **THE COURT:** Sure.

02:58PM 12 (Sidebar discussion held on the record.)

02:59PM 13 **MR. COOPER:** So, Judge, this is the same question and
02:59PM 14 answer that we did at the last trial.

02:59PM 15 I do think that we litigated it at the last trial.

02:59PM 16 There's not an objection right here in the direct.

02:59PM 17 But essentially, the chain of events is Peter
02:59PM 18 confronts her with this and says there's this picture of you,
02:59PM 19 whatever. Joe told me he pulled it out of some guy's house.

02:59PM 20 The context of him -- of her learning that the
02:59PM 21 defendant works for the DEA is the conversation with Peter
02:59PM 22 where he tells her, you know, I'm doing -- Peter tells her Joe
02:59PM 23 showed me this photograph.

02:59PM 24 And, so, I -- first of all, I don't think it's in
02:59PM 25 dispute at the trial that the defendant works for the DEA. He

works for the DEA. And the confronting her with -- about the photograph is nonhearsay, so --

MR. SINGER: The confrontation about the photograph is hearsay, Judge.

THE COURT: Why?

MR. SINGER: It's not in furtherance of the conspiracy. This is a statement made by Peter Gerace. The government's attempting to offer it for the truth of the matter asserted. It has nothing to do with furthering the conspiracy whatsoever at that point in time, it's hearsay.

I mean, I realize --

THE COURT: If he says the defendant told me that there are pictures that he found on his job.

MR. SINGER: Um-hum.

THE COURT: Right?

MR. SINGER: It's hearsay.

THE COURT: It's a statement -- Bongiovanni's statement --

THE REPORTER: I can't hear the judge.

THE COURT: I'm thinking out loud, Ann.

Bongiovanni's statement that Peter is not hearsay, why isn't Peter's statement to her hearsay?

MR. COOPER: So, first of all, Judge, I think that the defendant is searching a drug dealer's house. He finds these pictures of somebody related to Peter --

22 **MR. TRIPI:** If I can just jump in for a case to
23 amplify the point? On the coconspirator argument, what
24 Mr. Cooper's arguing is essentially it's a coconspirator
25 statement. The problem that I think defense and you have is

1 Ms. M.U. is not part of that conspiracy, right?

2 **THE COURT:** R.A.

3 **MR. TRIPI:** I'm sorry, I'm confused. R.A. is not
4 part of the conspiracy.

5 I believe that's the Beechnut case in the 2nd Circuit
6 which says essentially you don't have to be a member of the
7 conspiracy to be the receipt --

8 **THE COURT:** Receive the --

9 **MR. TRIPI:** -- and to transmit the coconspirator's
10 statement.

11 So, I would ask the Court to look at that, perhaps,
12 for five minutes before saying no.

13 **THE COURT:** No, no, I'm not -- I'm more saying yes
14 than no right now.

15 **MR. TRIPI:** Yeah, okay.

16 **THE COURT:** Tell me why he's not -- so the statement
17 from Bongiovanni -- do you agree with me the statement from
18 Bongiovanni to Gerace is not hearsay?

19 **MR. SINGER:** Yeah, it's a party opponent, so I don't
20 have any argument on that. So it's hearsay within hearsay.

21 **THE COURT:** It's the Gerace statement to her --

22 **MR. SINGER:** Yeah, that was my objection, was based
23 on the hearsay that Gerace is providing to R.A. So, again,
24 like, if you look at --

25 **THE COURT:** Gerace says Joe Bongiovanni told me.

03:02PM

1 **MR. SINGER:** X, Y, Z.

03:03PM

2 **THE COURT:** Yes.

03:03PM

3 **MR. SINGER:** And that's hearsay.

03:03PM

4 **THE COURT:** No, well, let's think about this for a
5 second.

03:03PM

6 **MR. SINGER:** Okay.

03:03PM

7 **THE COURT:** Joe Bongiovanni -- so, so the -- the
8 truth of the fact that Joe Bongiovanni told him that is what
9 you're admitting the statement for?

03:03PM

10 **MR. SINGER:** Yeah, they're offering it -- it's not to
11 show the effect on the listener or anything like that. It's
12 being offered --

03:03PM

13 **MR. COOPER:** Yeah, and I haven't argued that it was.
14 It's a coconspirator statement.

03:03PM

15 **THE COURT:** Right. So it's a coconspirator
16 statement. How is it in furtherance of the conspiracy?

03:03PM

17 **MR. COOPER:** Because his child's -- the person who
18 becomes his child's mother, who's living with him at the time,
19 has an association with a drug trafficker.

03:03PM

20 The DEA agent that Peter Gerace is allegedly
21 bribing -- right, what this trial is about -- is providing him
22 information. Hey, a person you live with has this association
23 to a drug dealer whose house we just raided.

03:03PM

24 I mean, that -- it's --

03:03PM

25 **MR. TRIPI:** It's Gerace weaponizing the information

1 that he's received as part of the conspiracy. And this is
2 what he needs to --

3 **THE COURT:** How is Gerace's statement to --

4 R.A.?

5 **MR. COOPER:** Yes.

6 **THE COURT:** -- how is Gerace's statement to R.A. in
7 furtherance of the conspiracy? How does that further the
8 conspiracy?

9 **MR. COOPER:** It's -- it's alerting her that the DEA
10 has raided the home of a drug trafficker, which is information
11 that Peter never should have had that he received from the
12 defendant.

13 He conveys it to this person whom he's close with
14 because she's a cocaine user, this guy's a drug dealer, and
15 he's telling her the DEA was in this person's house searching.

16 **MR. TRIPI:** Judge, if I may?

17 **THE COURT:** Yeah.

18 **MR. TRIPI:** The coconspirator statement is the
19 statement Bongiovanni to Gerace we, in sum and substance, we
20 raided a drug dealer's house, and R.A. has pictures in the
21 house. That's the statement.

22 **THE COURT:** I get that.

23 **MR. TRIPI:** Right? So --

24 **THE COURT:** No, no, the statement -- the statement
25 that she's going to testify to is Gerace says Bongiovanni --

03:04PM 1 **MR. TRIPI:** Told me. Right? So that's the
03:05PM 2 coconspiracy. Bongiovanni told me --

03:05PM 3 **THE COURT:** Bongiovanni told me.

03:05PM 4 **MR. TRIPI:** So that goes -- that's the Beechnut case.
03:05PM 5 That is --

03:05PM 6 **THE COURT:** Okay. I'm going to look at the case.

03:05PM 7 **MR. TRIPI:** -- she needs -- she can transmit the
03:05PM 8 Joe/Peter conversation even if she's not a coconspirator.

03:05PM 9 So on the analysis on the furtherance prong that you
03:05PM 10 asked about is: Is the conversation, that statement, Joe to
03:05PM 11 Peter, in furtherance of.

03:05PM 12 **THE COURT:** No.

03:05PM 13 **MR. TRIPI:** We would submit --

03:05PM 14 **THE COURT:** No, no. The furtherance has to be the
03:05PM 15 statement from Peter to her.

03:05PM 16 **MR. SINGER:** Correct.

03:05PM 17 **THE COURT:** Is that in furtherance of a conspiracy.
03:05PM 18 Because that's -- that's the --

03:05PM 19 **MR. TRIPI:** But that's the --

03:05PM 20 **MR. SINGER:** That's the basis of my objection.

03:05PM 21 **MR. TRIPI:** -- that's the back end of the information
03:05PM 22 he received. So it doesn't further anything if it's not
03:05PM 23 information important to Peter that he's going to use to
03:05PM 24 confront this person.

03:05PM 25 **MR. SINGER:** Right.

03:05PM 1 **THE COURT:** But the point -- so, this is hearsay
03:05PM 2 within hearsay, right? And the hearsay statement -- okay,
03:05PM 3 let's excuse the jury.

03:05PM 4 **MR. TRIPI:** I'm sorry, Your Honor.

03:05PM 5 **THE COURT:** No, no, that's okay. This is an
03:05PM 6 interesting question.

03:05PM 7 (End of sidebar discussion.)

03:05PM 8 **THE COURT:** Okay, folks. We have a pretty
03:06PM 9 interesting legal issue that we need to argue outside your
03:06PM 10 presence, so we'll take our second and last afternoon break
03:06PM 11 now.

03:06PM 12 Please remember my instructions about not talking
03:06PM 13 about the case even with each other, and not making up your
03:06PM 14 mind. We'll see you back here as soon as we're done.

03:06PM 15 (Jury excused at 3:06 p.m.)

03:06PM 16 **THE COURT:** Mr. Tripi, do you have a cite for the
03:06PM 17 Beechnut case?

03:06PM 18 **MR. TRIPI:** In my --

03:06PM 19 **MS. CHALBECK:** I've got it, Judge.

03:06PM 20 **MR. TRIPI:** Thank you.

03:06PM 21 **MS. CHALBECK:** I believe it's 871 F.2d 1181,
03:06PM 22 2nd Circuit, 1989.

03:06PM 23 **THE COURT:** Can you find that?

03:06PM 24 **MS. IZZO:** Ms. Chalbeck, could you say that again?
03:07PM 25 Sorry.

03:07PM 1 **MR. COOPER:** Slower.

03:07PM 2 **THE COURT:** Oh, look who's talking.

03:07PM 3 **MS. CHALBECK:** 871 F.2d 1181, 2nd Circuit, 1989. I

03:07PM 4 think it's United States versus Beechnut Nutrition Corp.

03:07PM 5 Does that sound right, Joe?

03:07PM 6 **MR. TRIPI:** That sounds right.

03:07PM 7 **THE COURT:** Okay. So here's -- I'm going to --

03:07PM 8 everybody can sit.

03:07PM 9 **MR. COOPER:** Can we excuse the witness?

03:07PM 10 **THE COURT:** Oh, I'm sorry. Yeah.

03:07PM 11 **MR. COOPER:** Thank you.

03:07PM 12 **THE COURT:** You can step down, ma'am, please.

03:07PM 13 **THE WITNESS:** Oh, okay.

03:07PM 14 **MR. COOPER:** You didn't do anything wrong.

03:07PM 15 **THE COURT:** No, you didn't do anything wrong.

03:07PM 16 **MS. CHALBECK:** We did something wrong.

03:07PM 17 **MR. COOPER:** Yeah, we just have to have a legal

03:07PM 18 argument in here without you.

03:07PM 19 **THE COURT:** I forgot she was still there.

03:07PM 20 (Witness excused at 3:07 p.m.)

03:07PM 21 **THE COURT:** So as understand it, what's being

03:07PM 22 elicited right now is the fact that Gerace says to her:

03:08PM 23 Bongiovanni told me that law enforcement has some photos of

03:08PM 24 you, some photos of you in lingerie.

03:08PM 25 And so that's -- so this is -- so there's two

statements that we're talking about here.

MR. COOPER: Before we -- can I read you -- because I think the words that I expect her to say are important for the analysis on the --

THE COURT: Go right ahead.

MR. COOPER: So the answer that she gave, I asked her:

"Question: What does Pete say to you?

This is page 13 of her trial transcript.

"Answer: Pete says to me, oh, Joe saw a picture of you in this guy's house, this drug dealer's house or something."

So that's the -- the statement that she makes, and then she further clarifies that he tells her --

THE COURT: Okay.

MR. COOPER: -- that he's a DEA agent.

THE COURT: So Bongiovanni says to Gerace: I saw a picture of R.A. in a drug dealer's house?

MR. COOPER: Or he gives it to him, but yeah, something like that.

THE COURT: Whatever -- that's not -- that's not hearsay, because that's a statement by a party --

MR. COOPER: Agreed.

THE COURT: -- and -- and probably in furtherance of the conspiracy as well.

1 But the statement from Gerace to R.A. that
2 Bongiovanni said to me, he saw a photo of you in lingerie in a
3 drug dealer's house, that's hearsay.

4 And unless it's a statement of a coconspirator in
5 furtherance of the conspiracy, and I don't see how that's in
6 furtherance of the conspiracy --

7 **MR. COOPER:** So if John Smith and Jane Smith live
8 together. And John Smith's in a conspiracy with another
9 person, a drug conspiracy. And the other person says, hey,
10 Jane Smith was interacting with this other drug dealer, and
11 that person's hot. Law enforcement searched their house,
12 they're on to them. And John Smith conveys that to Jane
13 Smith: You were at a person's house, or there's pictures of
14 you in a person's house who's on law enforcement's radar.

15 It's protecting John Smith. Because a person who
16 lives with him has exposure to someone who's on law
17 enforcement's radar.

18 **THE COURT:** But isn't that --

19 **MR. COOPER:** So they're --

20 **THE COURT:** -- different than here where the reason
21 that he's telling her that there's photos of her is that he
22 wants to, I mean, he's concerned about the fact that there are
23 photos of his girlfriend out there. That's different than --

24 **MR. COOPER:** I don't know that to be the case, and
25 there's not that testimony. He's --

24 **THE COURT:** That's not as bad as Mr. Cooper butchered
25 Buscaglia.

03:11PM 1 **MR. SINGER:** So it's 715 F.2d 769, 2nd Circuit, 1983.
03:11PM 2 And so what the 2nd Circuit said in that case is that
03:11PM 3 when you're talking about statements made in furtherance under
03:11PM 4 801(d)(2)(E), it has to prompt the listener to respond in a
03:11PM 5 way that facilitates the carrying out of some type of criminal
03:12PM 6 activity.

03:12PM 7 And so what we've had in this case is, you know,
03:12PM 8 like, we've had situations where Lou Selva was testifying to
03:12PM 9 statements made by other coconspirators involved in the Serio
03:12PM 10 DTO that would have prompted him to engage in the criminal
03:12PM 11 activity, or prompted other people to take certain actions as
03:12PM 12 part of the criminal activity.

03:12PM 13 **THE COURT:** Right.

03:12PM 14 **MR. SINGER:** And that's why the Courts let them in,
03:12PM 15 and that's why for the most part we haven't objected to a lot
03:12PM 16 of those statements. That's easy.

03:12PM 17 So this is a little different. And so it's different
03:12PM 18 in a couple different ways.

03:12PM 19 First off is that the distinction between Ms. R.A.
03:12PM 20 and many of the other witnesses who came in here who happen to
03:12PM 21 be exotic dancers is that the others all worked at Pharaoh's.

03:12PM 22 Ms. R.A. never worked at Pharaoh's. So that's a
03:12PM 23 distinction right there.

03:12PM 24 The second thing about it --

03:12PM 25 **THE COURT:** Why does that matter with this issue?

03:12PM 1 **MR. SINGER:** Because what the theory the government
03:12PM 2 has made in a lot of these cases where they're saying
03:12PM 3 statements are made in furtherance is that all of these ladies
03:12PM 4 who are coming in are also coconspirators.

03:12PM 5 And as the government conceded earlier --

03:12PM 6 **THE COURT:** I understand that. But the fact that
03:13PM 7 she's not a co --

03:13PM 8 So Mr. Cooper's argument I think is that the
03:13PM 9 reason -- this is not made to protect her, it's made to
03:13PM 10 protect Gerace. It's made in furtherance of a conspiracy,
03:13PM 11 because Gerace is basically messaging his girlfriend, fiancée,
03:13PM 12 not to go to this house of the drug dealer, and -- because
03:13PM 13 that might connect him to the drug dealer.

03:13PM 14 **MR. SINGER:** So, again, if you kind of work through
03:13PM 15 that, it's preposterous on its face, Judge.

03:13PM 16 Ms. R.A. doesn't have a relationship with Craig
03:13PM 17 Border at all at that point. And it's not like she had a
03:13PM 18 relationship with him very recently. It was over and done
03:13PM 19 with, at least in my understanding of the situation, like,
03:13PM 20 years ago.

03:13PM 21 So she has no relationship to this individual at all.
03:13PM 22 Mr. Border doesn't have any relationship to the drug
03:13PM 23 conspiracy involved in this case at all.

03:13PM 24 Ms. R.A.'s not involved in the drug conspiracy that's
03:14PM 25 alleged in the indictment at all. And so none of those things

1 connect her in any way whatsoever.

2 And that's the basis of the objection of the hearsay,
3 is that while I didn't object, and I would concede that on the
4 first layer of hearsay, which is the statement Bongiovanni
5 made to Gerace, comes in at least as an admission of a party
6 opponent, the second layer doesn't fulfill the in-furtherance
7 requirement, because Peter Gerace is communicating something,
8 a hearsay statement that's being offered to prove the truth of
9 the matter asserted in this Border search issue where they're
10 trying to prove up something in the indictment that's charged,
11 and the issue is is that it's hearsay. It's just rank
12 hearsay.

13 I realize it didn't come up at the first trial but,
14 you know, like, we missed the objection. We missed the
15 objection.

16 **MR. COOPER:** Judge, it's not years apart. That's
17 factually inaccurate.

18 You're gonna hear that the search warrant at Border's
19 house happened in December of 2005.

20 The photo of them all hanging out together, Peter and
21 the defendant, that photo is from 2005 in July. So, July to
22 December is five months.

23 **THE COURT:** Well, no, but he's saying the
24 relationship between R.A. and Border was over for a long time.

25 **MR. SINGER:** Correct. She testified that it was

1 between 2003 or '4 that they started up their relationship.

2 So she's long done with Border at that point.

3 **THE COURT:** The relationship Peter started then.

4 **MR. SINGER:** Correct.

5 **THE COURT:** Right. So we know she has not been in a
6 relationship with Border. So the -- the timeframe that
7 Mr. Singer's talking about is the timeframe from when the
8 pictures were taken, when she had the relationship with
9 Border. Not really when the pictures were taken, but when she
10 had the relationship with Border, until the statement is made.

11 So he's saying it's preposterous to think that Peter
12 is telling her that in furtherance of the conspiracy to say
13 don't go to Border's house, because she's never going to go to
14 Border's house. She hasn't been in a relationship with the
15 guy in years.

16 **MR. COOPER:** That's assuming that Peter knows all of
17 that to be true.

18 As opposed to Peter gets a call from the defendant
19 and says: There's pictures of your girlfriend in this dude's
20 house. He's a drug dealer. We just raided his house.

21 There's no proof or evidence that Peter had in his
22 mind at the time he said it, that relationship's been over for
23 years. She hasn't been there in years.

24 That's all out of thin air in this argument. But
25 there's no proof or --

03:16PM 1 **THE COURT:** He's telling her that though? The reason
03:16PM 2 he's telling her that is because he learned his girlfriend has
03:16PM 3 pictures that he'd rather not have somebody else see in the
03:16PM 4 hands of somebody else.

03:16PM 5 **MR. COOPER:** But what he says to her is: This drug
03:16PM 6 dealer's house. Found photos of you in this drug dealer's
03:16PM 7 house.

03:16PM 8 So I don't think it would be -- I don't think the
03:16PM 9 decision should ride on which way you cut on what's most
03:16PM 10 likely about what Peter indicated.

03:16PM 11 The words are: There's pictures of you in a drug
03:16PM 12 dealer's house, and my buddy who's in the DEA was just in
03:16PM 13 there, and there's a reasonable inference there that he's
03:16PM 14 telling her stay away from that place.

03:16PM 15 They're both involved in drugs, Peter and R.A. He's
03:17PM 16 telling her stay away from that place.

03:17PM 17 **THE COURT:** You get the last word, then I'm going to
03:17PM 18 go read this case.

03:17PM 19 **MR. SINGER:** And Judge, again, so if you kind of
03:17PM 20 break down the situation, so she starts dating Peter in like
03:17PM 21 2004. Let's just put it there, because she wasn't able to
03:17PM 22 kind of establish whether it was earlier or later, but she
03:17PM 23 said 2004 clearly.

03:17PM 24 They start dating. They eventually get married.

03:17PM 25 She testified about how she was pregnant in 2005,

1 that's why she stopped taking drugs. She has a child with him
2 in 2006.

3 She's been dating Peter Gerace at that point in time
4 for two-plus years when, you know, the most logical point
5 where this potential conversation may have occurred, occurs.

6 So again, like, her relationship with Border is done.
7 I mean, it is not even coming back into existence.

8 **MR. COOPER:** Peter's doesn't know that.

9 **MR. SINGER:** And there's no evidence to suggest that
10 it ever would. And so that's where, I realize the government
11 is saying, well, Peter Gerace would have no reason to believe
12 that. The evidence clearly says otherwise, Judge.

13 **MR. COOPER:** What evidence? What evidence says
14 otherwise? That Peter would have knowledge that the
15 relationship with Border ended years ago? What evidence?

16 **MR. SINGER:** Out of the witness's own mouth about the
17 fact that they're in an exclusive relationship at that point
18 in time.

19 **MR. COOPER:** She didn't say that.

20 **THE COURT:** Well, but --

21 **MR. SINGER:** And she's pregnant with his child.

22 **MS. CHALBECK:** We also don't know if Ms. R.A. was
23 buying drugs from the drug dealer. I mean, that's another
24 point.

25 **MR. COOPER:** Or that Peter thought that. There's no

03:18PM 1 evidence of that.

03:18PM 2 So counsel can say he thinks it's most likely, but to
03:18PM 3 say that evidence supports that is not accurate.

03:18PM 4 **MR. SINGER:** And I think now we're starting to get so
03:18PM 5 far afield. Well, Ms. R.A. could have purchased drugs from
03:18PM 6 Mr. Border.

03:18PM 7 Like, Judge, the arguments that are being
03:18PM 8 proffered -- all right, I understand why they're making them,
03:18PM 9 but the government doesn't have any idea what was fact and
03:18PM 10 fiction in this. And so it's just a stretch.

03:18PM 11 **MR. COOPER:** The operative question is what's in
03:18PM 12 Peter's mind. And the operative question is what's in Peter
03:18PM 13 mind at the time.

03:18PM 14 And so offering up alternative -- alternatives --

03:18PM 15 They have one alternative they want the Court to
03:18PM 16 accept as fact. There's another alternative, which is Peter
03:18PM 17 doesn't know if she had a relationship with Craig, when it
03:18PM 18 ended. All he knows is what she testifies to.

03:19PM 19 He says, my friend in the DEA found your photos in a
03:19PM 20 drug dealer's house. Those are the facts.

03:19PM 21 **THE COURT:** We don't even know the name of the drug
03:19PM 22 dealer necessarily, right?

03:19PM 23 **MR. COOPER:** I don't even think she said that.

03:19PM 24 She said, Joe saw a picture of you in this guy's
03:19PM 25 house, this drug dealer's house.

03:19PM 1 **THE COURT:** Okay. Let me go think about it.

03:19PM 2 Thank you.

03:19PM 3 (Off the record at 3:19 p.m.)

03:19PM 4 (Back on the record at 3:27 p.m.)

03:27PM 5 (Jury not present.)

03:27PM 6 **THE CLERK:** All rise. We are back on the record for
03:27PM 7 the continuation of the jury trial in case number 19-CR-227,
03:27PM 8 United States of America versus Joseph Bongiovanni.

03:27PM 9 All counsel and parties are present.

03:27PM 10 **THE COURT:** Okay. So here's what the case says.

03:28PM 11 Case says, first of all, there is no requirement that
03:28PM 12 the person to whom the statement is made also be a member of
03:28PM 13 the conspiracy. So that's out.

03:28PM 14 Whether a proper statement is made in furtherance of
03:28PM 15 a conspiracy is a preliminary question of fact to be
03:28PM 16 determined by the trial court by a preponderance of the
03:28PM 17 evidence. So the question is whether the statement promoted
03:28PM 18 or was intended to promote the goals of the conspiracy.

03:28PM 19 With respect to intended to promote, I think it's --
03:28PM 20 there's no way in the world that I can find by a preponderance
03:28PM 21 of the evidence that Gerace said that to her intending to
03:28PM 22 promote the conspiracy.

03:28PM 23 He might have. You're right, Mr. Cooper, it's
03:28PM 24 conceivable that he did. But I can't find by a preponderance
03:28PM 25 of the evidence that that was the reason. In fact, I

1 personally think it was more likely that he told him that
2 because he was unhappy with the fact that somebody had a photo
3 of her in lingerie.

4 And so while you're right, I can't let my own
5 judgment about that color the valuation of it, I still can't
6 say by a preponderance of the evidence that that's why he said
7 it to her.

8 It's at least as likely that there was another
9 reason. So the question becomes, did the statement promote
10 the conspiracy, and can I find by the preponderance of the
11 evidence that the statement in fact promoted the conspiracy.

12 And for that, I think we need a voir dire out of the
13 presence of the jury.

14 **MR. COOPER:** Okay.

15 **THE COURT:** I think we need to find out from her.
16 And, Mr. Singer, I'll let you ask questions. But I think we
17 need to find out from her whether that statement had any
18 effect on her as to whether she did or did not do anything.

19 **MR. COOPER:** Whether she, in fact, like, went on to
20 associate with Border, like, decided to --

21 **THE COURT:** Yeah.

22 **MR. COOPER:** -- associate with Border.

23 **THE COURT:** Did it change -- did it -- did it affect
24 her decisions about whether to associate with this guy, did
25 she know who it was.

03:30PM

1

MR. COOPER: Okay.

03:30PM

2

THE COURT: Did it affect her decisions whether to

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3

associate with the guy. You know, why did it affect her

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4

decisions not to -- I mean, you know, she may say I was never

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5

going to associate with him anyway.

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6

MR. COOPER: Sure.

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7

THE COURT: And if that's the case, then I don't

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8

think so.

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9

MR. COOPER: Can I make a -- if -- before we do that,

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10

can I make another argument as to a different -- I think

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11

there's an argument as well that it's a statement against

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Peter's penal interests to indicate to her that he's accepted

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information that's law-enforcement sensitive about private

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photos in a person's house, he's expressing that to her, it's

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something we're going to offer against Peter at Peter's trial

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in a couple months. Peter's unavailable to us. And so I

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would argue as an alternative that Peter admitting this to her

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is a statement against his penal interests.

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19

MR. SINGER: I think that's more far afield than some

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of other arguments I've heard, Judge.

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21

Statements against penal interest are something along

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the lines of I shot the sheriff, you know? Or yes, I engaged

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23

in drug dealing all the time.

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24

There's something where clearly it indicates to the

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25

listener from the perspective of the declarant that I

1 committed some type of criminal activity, and I'm telling you
2 this which, of course, is against their penal interest to do.

3 What is being communicated here is that I found out
4 that from my law enforcement buddy that there are pictures of
5 you existing in this house. That's not something that even
6 comes close to the clear-cut rule under declaration against
7 penal interest. It just doesn't fit.

8 **MR. COOPER:** Judge, not all cases are 711 robberies.
9 I shot the clerk is not the only statement.

10 This is a bribery case. Mr. Singer said it's about
11 her perspective, it's not. It doesn't require that you
12 analyze what her perspective is.

13 Peter is saying I received law-enforcement sensitive
14 information from a DEA agent. That's a statement against his
15 penal interests, especially when the facts that exist in this
16 case exist surrounding it. It's not in a vacuum. You don't
17 have to consider it in isolation. He's making an admission to
18 her that he received law-enforcement sensitive information
19 from the defendant.

20 Whether she knew that or not does not matter.

21 **MR. SINGER:** And, again, I guess what you talk about
22 law-enforcement sensitive information, Judge, law-enforcement
23 sensitive information is: Joe told me that the DEA's about to
24 execute a search at Craig Border's house.

25 That's law-enforcement sensitive information.

03:32PM 1 **MR. COOPER:** Not true, Judge.

03:32PM 2 **THE COURT:** I'm not so sure that -- I'm not so sure
03:32PM 3 that a statement about what someone found during a search of
03:32PM 4 somebody's premises is not law-enforcement sensitive as well.

03:32PM 5 Why wouldn't that be law-enforcement sensitive?

03:32PM 6 **MR. SINGER:** Again, it -- it's not involving
03:32PM 7 something that has to go to the -- the -- the entirety of the
03:32PM 8 case that the law enforcement agency's building against a
03:32PM 9 person. So like if, for instance, there was a communication
03:32PM 10 of we found 4 ounces of cocaine at this one particular
03:33PM 11 address.

03:33PM 12 **THE COURT:** Easy.

03:33PM 13 **MR. SINGER:** We found evidence that links you to this
03:33PM 14 particular person in this particular crime because your
03:33PM 15 fingerprints are on the --

03:33PM 16 **THE COURT:** Like a photograph.

03:33PM 17 **MR. SINGER:** No, but the photograph is different
03:33PM 18 because -- here's the difference, Judge. It wasn't a
03:33PM 19 photograph of Peter that they found. They didn't find Peter
03:33PM 20 Gerace's photograph --

03:33PM 21 **THE COURT:** Who cares?

03:33PM 22 **MR. SINGER:** -- or mail or other things like that
03:33PM 23 inside the residence.

03:33PM 24 **THE COURT:** Who cares who the photograph is of?

03:33PM 25 What I'm -- the question is, is this law-enforcement

1 sensitive? And I think that anything's that's found in a
2 search is law-enforcement sensitive because anything that's
3 found in the search might link someone to --

4 I mean, it's sort of like the Fifth Amendment inquiry
5 that we make when a witness says I decline to answer on the
6 grounds that it may incriminate me. That doesn't have to be a
7 directly incriminatory statement, it could be something in a
8 link of things, right?

9 **MR. SINGER:** So going back to the perspective of the
10 declarant, so Peter Gerace is the one who's making the
11 statement in the case, so he's the one who has to have some
12 type of awareness that it's against his penal interest --

13 **THE COURT:** Yeah.

14 **MR. SINGER:** -- to make a statement like that --

15 **THE COURT:** Yeah.

16 **MR. SINGER:** -- this is -- this is the issue is that
17 when it's very clear-cut about, like, they found drugs that
18 are connecting you to this, like, the declarant's going to
19 know, like, oh, my God, I'm screwed.

20 I mean, very similar to the Beechnut case where the
21 declarants are saying, we got away with it, I can't believe
22 it. That's clear-cut.

23 **THE COURT:** Yep.

24 **MR. SINGER:** That's not the same thing when we found
25 a picture of your current girlfriend in this guy's house,

that's not something that meets the same bar, Judge.

MR. COOPER: Judge --

THE COURT: Well, there's no question that you're right about that, but the question is does it -- does it -- is it enough?

Go ahead.

MR. COOPER: So Peter Gerace is telling this person, I received what I think at least the government and the Court agree is law-enforcement sensitive information from the defendant.

And the context surrounding it is that this defendant is on trial for receiving bribes from that person. There's so, the facts surrounding it are that Peter Gerace is conspiring to bribe Joseph Bongiovanni, then saying to someone I received law-enforcement sensitive information from Joseph Bongiovanni is obviously, in his mind, a statement against his penal interest.

They're never smart statements to make. You would never sit up there and think, like, should a person say this. But do they, in their mind, know it's against their penal interests to say I received law-enforcement sensitive information from a DEA agent.

THE COURT: Yeah, that -- it's a harder question for me to decide. And I don't know, is this the last argument you're going to make on this?

1 If I go back, you're not going to come out and tell
2 me you've got another one, are you?

3 **MR. COOPER:** I'm not. And that one was brought to my
4 attention, if I'm being honest, in between the breaks. So --

5 **THE COURT:** Yeah. So let me go and think about this,
6 too. And I also want -- can we find a case that talks about
7 whether it is in fact -- Mr. Singer and I have been discussing
8 this as if it is a forgone conclusion that the standard is
9 what the person who made the statement was thinking when he
10 made the statement. Did he have to know that it was against
11 his penal interests.

12 **MR. MacKAY:** And, Judge, if I could supplement that a
13 little bit in response to Mr. Cooper's argument?

14 If I understand it, the government's argument is sort
15 of presuming the fact that they're in a bribery relationship,
16 and that's why he knows it's against his penal interest. I
17 mean, the general idea of hearsay as I understand it is that
18 certain categories of statements are admissible because
19 they're independently trustworthy for other reasons here.

20 So in order to get to the government's theory, I
21 think it has to presume the fact that they're trying to prove
22 in the first place that there's some sort of elicited
23 relationship.

24 I mean, if somebody, I guess, walked up to me on the
25 street and told me your ex-girlfriend's photos are in this

03:36PM 1 house, I saw them and I'm a law enforcement officer, I'm not
03:36PM 2 sure that I would make that jump that it's law-enforcement
03:36PM 3 sensitive information and I'm somehow in trouble for telling
03:37PM 4 my current girlfriend that that's what's going on.

03:37PM 5 I think the government's argument presumes that in
03:37PM 6 the middle there's that elicited relationship that's the focus
03:37PM 7 of this case.

03:37PM 8 **MR. COOPER:** When the Court considers it, you should
03:37PM 9 consider it in the context of the proof and the evidence that
03:37PM 10 you've heard about the nature of that illicit relationship --

03:37PM 11 **THE COURT:** Of course.

03:37PM 12 **MR. COOPER:** -- of cocaine together.

03:37PM 13 **THE COURT:** Of course.

03:37PM 14 **MR. COOPER:** And I would add, Judge, I'm reading from
03:37PM 15 Courtroom Evidence, Second Edition from February of 2001.
03:37PM 16 So -- 2001.

03:37PM 17 But note that the relevant inquiry is whether the
03:37PM 18 declarant believed the statement to be contrary to his or her
03:37PM 19 own interest at the time the statement was made, not whether
03:37PM 20 the statement actually was against their interest.

03:37PM 21 I assume that hasn't changed since 2001, but it may
03:37PM 22 have.

03:37PM 23 **MR. TRIPI:** Judge, I would just note that Count 2,
03:37PM 24 the charge between the defendant and Mr. Gerace goes all the
03:37PM 25 way back to 2005, so I think that undercuts it a little bit

about what Mr. MacKay just argued.

THE COURT: Yeah, I'm not so sure the thing you just read to me, Mr. Cooper, cuts. I mean, this statement certainly was against his penal interest. So, it actually was.

The question is, did he -- did he recognize that it was against his penal interest when he made it.

Okay. Let me go think.

THE CLERK: Okay, all rise.

MR. TRIPI: We appreciate the Court taking a hard look at this.

THE COURT: Oh, no, no, no. These are -- you know, again, these are interesting issues. And I want to get it right. And I want to get it right.

MR. COOPER: Thanks, Judge.

(Off the record at 3:38 p.m.)

(Back on the record at 3:43 p.m.)

(Jury not present.)

THE CLERK: All rise.

THE COURT: Like a Jack-in-the-Box, right.

THE CLERK: We are back.

THE COURT: Please be seated.

THE CLERK: We are back on the record for the continuation of the jury trial in case number 19-cr-227, United States of America versus Joseph Bongiovanni.

03:43PM 1 All counsel and parties are present.

03:43PM 2 **THE COURT:** Okay. You guys are making me earn every
03:43PM 3 penny of my salary today.

03:43PM 4 So the question with respect to statement against
03:44PM 5 interest is whether the offered statement would be perceived
03:44PM 6 by a reasonable person to be detrimental to his or her own
03:44PM 7 penal interest. And I'm citing United States versus Ojudun,
03:44PM 8 915 F.3d 875, a 2nd Circuit case from 2019.

03:44PM 9 And so -- and I don't think that a reasonable person
03:44PM 10 who's not a prosecutor, not a defense lawyer, just a regular
03:44PM 11 average schmo, would perceive that as being against his penal
03:44PM 12 interest. It's just too -- there's too many steps there. And
03:44PM 13 so I don't think it crosses that threshold.

03:44PM 14 I do still think we have the issue of whether the
03:44PM 15 statement was, in fact, in furtherance of the conspiracy,
03:44PM 16 whether accomplished something to further the conspiracy. So
03:45PM 17 I think we need to do a brief voir dire on that.

03:45PM 18 And, again, I'll let you ask some questions --

03:45PM 19 **MR. COOPER:** Yeah.

03:45PM 20 **THE COURT:** I'll let Mr. Singer ask some questions,
03:45PM 21 and then I'll make a decision.

03:45PM 22 **MR. COOPER:** Understood. Thanks, Judge.

03:45PM 23 Can we bring her back in, Brian? Thank you.

03:45PM 24 Ann, can you tell me that last question real quick?

03:45PM 25 (The above-requested question was then read by the

reporter.)

MR. COOPER: Okay.

(Witness seated at 3:46 p.m.)

(Jury not present.)

MR. COOPER: Ann, will you let me know when you're ready?

Judge, may I inquire?

THE COURT: You may.

VOIR DIRE EXAMINATION - NO JURY - BY MR. COOPER:

Q. So, ma'am, we're going to ask you some questions without the jury here just to decide a legal issue about whether something's admissible or not. It doesn't have anything to do with anything you said right or wrong; do you understand?

A. Yes.

Q. Okay. Peter Gerace ultimately tells you that -- well, let me read it.

Peter tells you, Joe saw a picture of you in this drug dealer's house or something like that --

A. Yeah.

Q. -- is that right?

A. Along the context of that.

Q. Okay. And when Peter said that to you, did that cause you in the future to avoid associating with Craig Border?

A. I don't think it necessarily avoided me associating with

03:46PM 1 him. He ended up just going to jail.

03:46PM 2 Q. Okay. Well, I guess not whether it did cause you to

03:46PM 3 avoid associating with him, but in your head, were you like,

03:46PM 4 oh, I'm going to stay away from that guy. Now did that

03:47PM 5 thought cross your mind when Peter told you this?

03:47PM 6 A. Potentially. But it was more so that I was dating Peter,

03:47PM 7 so I was no longer dating Craig.

03:47PM 8 Q. I get that. But the question is, did -- I'm asking did

03:47PM 9 the thought cross your mind, like, I better stay away from

03:47PM 10 Craig 'cuz he's a drug dealer, and a DEA agent raided his

03:47PM 11 house?

03:47PM 12 A. Truthfully, I -- I -- I mean, I was -- I don't think it

03:47PM 13 really made a difference. I mean, I'm not gonna, like --

03:47PM 14 Q. All we want is the truth.

03:47PM 15 **THE COURT:** That's right. He's not trying to get you

03:47PM 16 to say anything.

03:47PM 17 We just want to know when you heard that, did you

03:47PM 18 think to yourself, I shouldn't go see Craig Border because

03:47PM 19 he's a drug dealer who's being investigated?

03:47PM 20 **THE WITNESS:** Yes.

03:47PM 21 **MR. COOPER:** Okay.

03:47PM 22 **THE COURT:** You did think that?

03:47PM 23 **THE WITNESS:** I thought that.

03:47PM 24 **THE COURT:** Okay. Mr. Singer, do you want to ask

03:47PM 25 some questions?

03:47PM

1

03:47PM

2

VOIR DIRE EXAMINATION - NO JURY - BY MR. SINGER:

03:47PM

3

Q. So Ms. R.A. -- I'm sorry, I'll go from here.

03:47PM

4

So Ms. R.A., so let's break it down a little bit.

03:48PM

5

So you and Peter are together in a room when you have

03:48PM

6

this conversation?

03:48PM

7

A. I'm sorry, I didn't hear you.

03:48PM

8

Q. Where are you and Peter when Peter tells you about this

03:48PM

9

photograph that was found in Craig Border's house?

03:48PM

10

A. I think we were at our house, or our apartment.

03:48PM

11

Q. So you're in your house, to the best of your memory,

03:48PM

12

right?

03:48PM

13

A. Yes.

03:48PM

14

Q. And then when Peter is bringing this up in conversation,

03:48PM

15

was this something that just came out of the blue? Or were

03:48PM

16

you guys involved in some type of conversation at the time?

03:48PM

17

A. I just think, like, Peter had tendency to be a little

03:48PM

18

jealous sometimes, so I think it came in -- like, came up in

03:48PM

19

a disagreement probably from -- because of what I did in my

03:48PM

20

past or whatever. He's kind of like, oh, by the way, like,

03:48PM

21

you know, this happened.

03:48PM

22

Q. So I'm guilty of this sometimes where my wife tells me I

03:48PM

23

do something wrong, and I say well, hold on a second, do you

03:48PM

24

remember when you did this?

03:48PM

25

A. Right.

03:48PM 1 Q. Was that kind of the context of something that this came
03:49PM 2 up in?

03:49PM 3 A. Yes.

03:49PM 4 Q. All right.

03:49PM 5 A. It was like that.

03:49PM 6 Q. So when he made the statement to you, Peter, about what
03:49PM 7 Joe Bongiovanni purportedly found in the house --

03:49PM 8 A. Um-hum.

03:49PM 9 Q. -- what was the first thing that came in your head after
03:49PM 10 that statement was made?

03:49PM 11 A. Actually, I was kind of embarrassed because, oh, like,
03:49PM 12 his friend saw me in some lingerie. I mean, that's really
03:49PM 13 kind of what the first thing that came into my head was.

03:49PM 14 Q. So the first thing that came up in your head was
03:49PM 15 embarrassment.

03:49PM 16 A. Yes.

03:49PM 17 Q. As -- as time progressed, what was the next thing that
03:49PM 18 came up in your mind about what you'd just been told?

03:49PM 19 A. Well, like, what do you mean by that?

03:49PM 20 Q. Yeah. So I guess one of the things you just stated
03:49PM 21 during this question-and-answer process is that you had some
03:49PM 22 type of concerns about I shouldn't hang out with this guy.

03:50PM 23 I realize, like, that's what the judge asked you and
03:50PM 24 that's what prosecutor asked you, right?

03:50PM 25 A. Um-hum.

03:50PM 1 Q. But what I'm trying to determine is when did that thought
03:50PM 2 enter your head?

03:50PM 3 A. I wasn't hanging out with him at all anyway. I wasn't,
03:50PM 4 like, he was already, like, in jail I think. Or -- I'm not
03:50PM 5 really sure how that all came about.

03:50PM 6 But I didn't think I'm not going to hang out with him
03:50PM 7 because I'm wouldn't hang out with him anyway because I'm
03:50PM 8 dating Peter.

03:50PM 9 Q. Yeah, and so let's kind of backtrack a little bit.

03:50PM 10 So you testified on direct about --

03:50PM 11 A. Right.

03:50PM 12 Q. -- you started dating Peter sometime in -- when? What
03:50PM 13 year?

03:50PM 14 A. 2005, it had to be.

03:50PM 15 Q. So we saw the picture of you and Peter at the restaurant,
03:50PM 16 right?

03:50PM 17 A. Yes.

03:50PM 18 Q. That was July of '05, correct?

03:50PM 19 A. Yes.

03:50PM 20 Q. So did you start dating Peter before that?

03:50PM 21 A. Yes.

03:50PM 22 Q. How much more before that July dinner photo did you date
03:50PM 23 Peter?

03:50PM 24 A. Let's see. Probably two months before that.

03:51PM 25 Q. All right. So it would have been summer of 2005 when you

03:51PM 1 started dating?

03:51PM 2 A. Yes.

03:51PM 3 Q. Fast forward, this particular conversation, when do you

03:51PM 4 believe this conversation occurred?

03:51PM 5 A. In September.

03:51PM 6 Q. So were you pregnant at the time?

03:51PM 7 A. I just found out I was pregnant.

03:51PM 8 Q. All right. So you just found out you were pregnant.

03:51PM 9 Were you married at the time to Peter at that time?

03:51PM 10 A. Was I married to him?

03:51PM 11 Q. Yes.

03:51PM 12 A. No.

03:51PM 13 Q. Okay. So you're still -- were you engaged at that time?

03:51PM 14 A. No.

03:51PM 15 Q. So in September of 2005, how much time had elapsed since

03:51PM 16 you ended your relationship with Craig Border?

03:51PM 17 A. Well, I was dating Craig right before I met Peter. Like

03:52PM 18 right before, probably like a month before.

03:52PM 19 Q. And you said you started up your relationship with Peter

03:52PM 20 sometime in May of 2005?

03:52PM 21 A. Yes.

03:52PM 22 Q. So would you have been dating Craig up to when in '05?

03:52PM 23 A. Probably beginning of July maybe. No, I'm sorry, June.

03:52PM 24 Q. I'm sorry?

03:52PM 25 A. May and June. I only dated him for like a month.

03:52PM 1 Q. Yeah, and I guess -- so I'm a little confused. So you
03:52PM 2 started dating Peter you just said in May of '05; is that
03:52PM 3 right?

03:52PM 4 A. Yes.

03:52PM 5 Q. Because that was -- that was roughly about two months
03:52PM 6 before that July dinner photo that we saw in 2005, correct?

03:52PM 7 A. What?

03:52PM 8 Q. So the picture that you got shown on direct?

03:52PM 9 A. Okay, yes. This is a really long time ago, so --

03:52PM 10 Q. No, no, no, I know. I'm sorry, I'm trying to work
03:52PM 11 through it. So that particular photograph was taken in July
03:52PM 12 of 2005?

03:52PM 13 A. Yes.

03:52PM 14 Q. We know that from the stamp on the back of it.

03:53PM 15 A. Um-hum.

03:53PM 16 Q. So, you said that you started dating Peter in May of
03:53PM 17 2005, right?

03:53PM 18 A. Um-hum.

03:53PM 19 Q. So, you just said that you were dating Craig in June of
03:53PM 20 '05.

03:53PM 21 A. I'm sorry, so it had to have been in April then.

03:53PM 22 Q. Okay.

03:53PM 23 A. Like a month before.

03:53PM 24 Q. Yeah. No, no, that's what I was getting at.

03:53PM 25 Okay. So, yeah. So your relationship with Border

1 completely ends before you start dating Peter?

2 A. Yes.

3 Q. So the last possible time you could have probably been
4 dating him was in April of 2005?

5 A. Yes.

6 Q. So, April to September of '05, that's a number of months,
7 correct?

8 A. Um-hum.

9 Q. And had you seen Craig Border at all in that period of
10 time after you broke up with him and started dating Peter?

11 A. No.

12 Q. Had you talked to him on the phone?

13 A. No.

14 Q. Had you ever purchased any type of drugs from him?

15 A. No.

16 **THE COURT:** Would you have seen him if Peter had not
17 told you that there was a -- that somebody saw a photograph of
18 you at his house and he was being investigated for drugs?

19 **THE WITNESS:** I probably wouldn't talk to him,
20 because I'd be like, oh, well, he's being investigated. Like,
21 you know.

22 **THE COURT:** No, no. But I'm saying if Peter hadn't
23 said that to you, would you have seen him and talked to him?

24 **THE WITNESS:** I wouldn't be afraid to if I saw him.

25 **THE COURT:** Yeah, but the question I have is, I mean,

1 so you broke up with him.

2 **THE WITNESS:** Yes.

3 **THE COURT:** And now we're six months down the road.

4 **THE WITNESS:** Right.

5 **THE COURT:** And now the question is, would you have
6 seen him? Would you have had occasion to see him, would you
7 have had reason to see him, had Peter not said that to you?
8 Did it make a difference?

9 **THE WITNESS:** No.

10 **THE COURT:** It didn't make a difference.

11 **THE WITNESS:** I don't think it made a difference.

12 I'm sorry, I'm really confused.

13 **MR. COOPER:** You're doing fine. This is legal stuff
14 for us to argue about. All you have to do is answer the
15 questions. You're doing fine.

16 Judge, I have I think a little argument depending on
17 which way you're coming down here, but I'll wait.

18 **THE COURT:** Do you want -- well, let's see if
19 Mr. Singer has any more questions.

20 **MR. SINGER:** Just one moment, Judge.

21 **THE WITNESS:** I mean, I'm just thinking of -- oh.

22 **BY MR. SINGER:**

23 Q. I think the only other question I had is when you broke
24 up with Border, you just left him completely, correct?

25 A. Yes.

03:55PM 1 Q. And there really wasn't a lot of communication about the
03:55PM 2 breakup between both of you?

03:55PM 3 A. No.

03:55PM 4 Q. And that's why there wasn't any communication --

03:55PM 5 A. Right.

03:55PM 6 Q. -- between the both of you?

03:55PM 7 A. Um-hum.

03:55PM 8 Q. Did you leave on bad terms?

03:55PM 9 A. No, it was just really short lived.

03:55PM 10 Q. Okay. So it was a -- kind of a superficial relationship?

03:56PM 11 A. Yeah, a relationship of opportunity, I would have to say
03:56PM 12 that.

03:56PM 13 Q. And how long was that relationship with Craig again?

03:56PM 14 A. Probably a month.

03:56PM 15 Q. All right.

03:56PM 16 **THE COURT:** Did you ever see him after that?

03:56PM 17 **THE WITNESS:** No.

03:56PM 18 **THE COURT:** To this day?

03:56PM 19 **THE WITNESS:** No.

03:56PM 20 **THE COURT:** Okay. Anything?

03:56PM 21 **MR. COOPER:** I don't have any -- I don't think I need
03:56PM 22 to ask more questions.

03:56PM 23 **THE COURT:** Fine.

03:56PM 24 Okay. So why don't you step out, ma'am.

03:56PM 25 (Witness excused at 3:56 p.m.)

(Jury not present.)

MR. COOPER: So focusing only on the second prong that Your Honor brought her in for the voir dire for.

THE COURT: Right.

MR. COOPER: The second prong is about whether it in fact furthered a goal of the conspiracy.

What she said was if he hadn't said anything to me, had not said anything to me, I wouldn't have been concerned about interacting with Border in the future.

Because he did say something to me -- because he did say something to me, I would have been concerned to interact with him in the future.

THE COURT: She said it wouldn't have made any difference.

MR. COOPER: But, Judge, what we were asking her to do with those questions is speculate whether she ever would have ever seen that person again.

But at the moment she's hearing it, it causes her to say if he hadn't said it, I wouldn't have had any problem associating with him. Once he said it, I would have a problem.

Those were the operative questions. Your Honor, I think, hit both of them. But that's the analysis for that second prong.

MR. SINGER: So, Judge, if you notice the approach

03:57PM 1 that I took in contrast, with all due respect, to yourself and
03:57PM 2 Mr. Cooper, I asked very open-ended questions about what was
03:57PM 3 the first thing in your mind, and allowed Ms. R.A. to fill in
03:57PM 4 the blank.

03:57PM 5 What did I not do is say, hey, did this put in your
03:57PM 6 head that you should stay away from him?

03:57PM 7 And if you noticed, when I asked her the open-ended
03:58PM 8 question, I think we got the most truthful and accurate
03:58PM 9 answer, versus when we asked her the close-ended question of
03:58PM 10 simply getting out the answer which would allow this to become
03:58PM 11 admissible from the government's perspective.

03:58PM 12 And when you start to further dive into the context,
03:58PM 13 Judge, this is happening during some type of lover's quarrel
03:58PM 14 or something elsewhere where, you know, she says one thing, he
03:58PM 15 says the other, and then he kind of he retorts back, well, you
03:58PM 16 know what? I know that you have pictures over here because
03:58PM 17 someone told me.

03:58PM 18 And she, as she testified, the first thing in her
03:58PM 19 head is like, oh, my God that's embarrassing.

03:58PM 20 That's what's going on.

03:58PM 21 On top of that, she has a very superficial
03:58PM 22 relationship with Mr. Border. It lasts a month. She never
03:58PM 23 purchased drugs from Mr. Border, so she doesn't really have
03:58PM 24 any understanding of what's going on with him with regard to
03:58PM 25 his drug-dealing activities.

03:58PM 1 And if, you know, she was -- she also testified that
03:58PM 2 she never would go there to go purchase drugs because she
03:58PM 3 didn't have any type of a relationship with him at all.

03:58PM 4 **THE COURT:** Okay.

03:58PM 5 **MR. SINGER:** That all falls apart right there.

03:59PM 6 I think if you go back to the Beechnut case, Judge,
03:59PM 7 this falls into that idle chatter or mere narrative which is
03:59PM 8 not in furtherance of the conspiracy.

03:59PM 9 **THE COURT:** Okay. You get the last word, Mr. Cooper.

03:59PM 10 **MR. COOPER:** First of all, I -- I understand that the
03:59PM 11 open-ended, non-leading question, elicited the answer that was
03:59PM 12 obviously most in her mind, which makes sense, because it is
03:59PM 13 embarrassing, probably mortifying for her. But that doesn't
03:59PM 14 mean the answer she gave the Court was inaccurate, or that you
03:59PM 15 put it in her -- in her mind.

03:59PM 16 You asked her, would it have made you less likely to
03:59PM 17 interact with the person in the future. She answered that
03:59PM 18 question.

03:59PM 19 A separate question was, if he hadn't -- you asked
03:59PM 20 her, Judge, if he had not said anything to you, would that --
03:59PM 21 would you have? And she said sure.

03:59PM 22 Like, the delineating fact there is Peter saying it
03:59PM 23 to her. And so that's the final argument that I have, and
03:59PM 24 I'll submit to the Court's ruling.

03:59PM 25 **THE COURT:** This is -- it's a very close question.

1 And I think what tips the balance for me was her statement
2 that it wouldn't have made any difference.

3 And I think that based on that, she would not have
4 seen him, and it's not in furtherance of the conspiracy.

5 So it's a close question. I know we've rolled around
6 with it quite a bit, but I'm not going to let it in. I'm not
7 going to let it in.

8 And it's, as I say, it's a -- if the standard weren't
9 a preponderance, then I would let it in. But it is a
10 preponderance, I've got to find more likely than not, and I
11 just don't think I can in good conscience find it.

12 Okay. Let's get the jury back in, let's bring her
13 back in. How much longer are you going to be, Mr. Cooper?

14 **MR. COOPER:** I've lost my place, give me a second.
15 It's been a while.

16 **THE COURT:** Yeah, I know.

17 **MR. COOPER:** Very short. And I do plan to go about
18 this in different ways without eliciting hearsay. So I'm not
19 trying to be sideways with it. Obviously, he can object as
20 much as he wants, but I just want to be clear about that.

21 **MR. SINGER:** I will object as much as I want.

22 **MR. COOPER:** No, I didn't mean that in a --

23 **THE COURT:** He didn't need your permission?

24 **MR. COOPER:** Correct. Definitely didn't think that.

25 **THE COURT:** Who's after her?

04:01PM 1 **MR. COOPER:** Craig Border. Less than 20 minutes.

04:01PM 2 **MR. TRIPI:** And he's going to say certain photos are
04:01PM 3 missing in his residence.

04:01PM 4 (Witness seated at 4:01 p.m.)

04:03PM 5 (Jury seated at 4:03 p.m.)

04:03PM 6 **THE COURT:** Okay. The record will reflect that all
04:03PM 7 our jurors are present again.

04:03PM 8 I apologize for the delay, but as I say, we had a
04:03PM 9 legal issue that we needed to vet outside your presence.

04:03PM 10 You may continue.

04:03PM 11 I remind the witness she's still under oath.

04:03PM 12 You may continue.

04:03PM 13 **MR. COOPER:** Thank you, Judge.

04:03PM 14

04:03PM 15 **(CONT'D) DIRECT EXAMINATION BY MR. COOPER:**

04:03PM 16 Q. Ms. R.A., a little while ago, I was asking you questions
04:03PM 17 about some photographs that someone took of you; do you
04:03PM 18 remember those questions?

04:03PM 19 A. Yes.

04:03PM 20 Q. What was the name of the person who took those
04:03PM 21 photographs?

04:03PM 22 A. Craig Border.

04:03PM 23 Q. Okay. And that was like a boyfriend from before you met
04:03PM 24 Peter Gerace, right?

04:03PM 25 A. Yes.

04:03PM 1 Q. Was he -- was your relationship with Border kind of the
04:03PM 2 one right before you got involved in a relationship with
04:03PM 3 Gerace?

04:03PM 4 A. Yes.

04:03PM 5 Q. Okay. We talked about those photos before. Was that
04:03PM 6 wearing, like, a Playboy Bunny outfit?

04:03PM 7 A. Yes.

04:03PM 8 Q. Okay. And did you -- did you ever tell Peter Gerace
04:04PM 9 about the existence of those photos?

04:04PM 10 A. No.

04:04PM 11 Q. Did there come a time when Peter Gerace confronted you
04:04PM 12 about the existence of those photos?

04:04PM 13 A. Yes.

04:04PM 14 **MR. SINGER:** Objection. Again, calls for hearsay.

04:04PM 15 **MR. COOPER:** It's a confrontation, Judge.

04:04PM 16 **THE COURT:** No. No. Overruled.

04:04PM 17 **BY MR. COOPER:**

04:04PM 18 Q. Did Peter Gerace confront you about the existence of
04:04PM 19 those photos?

04:04PM 20 A. Yes.

04:04PM 21 Q. Is that -- you recall that happening specifically in your
04:04PM 22 mind?

04:04PM 23 A. Yes.

04:04PM 24 Q. I'm not going ask you what was said during that
04:04PM 25 confrontation, but was that the same time in your life when

1 you learned what this defendant did for work?

2 A. Yes.

3 Q. Was it the same day?

4 A. No.

5 Q. Without getting into the contents of what Peter Gerace

6 said to you, did you come to learn from talking with Peter

7 Gerace how Peter Gerace knew about those photos of you in the

8 Playboy Bunny outfit in Craig Border's house?

9 A. Yes.

10 **MR. SINGER:** Objection. Calls for hearsay.

11 **THE COURT:** No. Did she learn, no.

12 **BY MR. COOPER:**

13 Q. Did you come to learn that, ma'am?

14 A. Yes.

15 Q. Who's the person who told you that? Who told you how

16 they learned of it?

17 A. Peter.

18 Q. Peter told you how he learned of it?

19 A. Yes.

20 Q. Okay. During the course of your relationship with Peter

21 Gerace, did there come a time where you learned that he was

22 using cocaine?

23 A. Yes.

24 Q. Okay. And did that cocaine use by Peter cause some

25 consternation in your relationship with him?

04:05PM 1 A. Yes.

04:05PM 2 Q. Why?

04:05PM 3 A. Because he wouldn't come home sometimes.

04:05PM 4 Q. Okay. Did you know where he worked when you were living

04:05PM 5 with him in your relationship?

04:05PM 6 A. Yes.

04:05PM 7 Q. Where did he work?

04:05PM 8 A. Pharaoh's.

04:05PM 9 Q. Okay. What was his role or his position there?

04:05PM 10 A. He ran it.

04:05PM 11 Q. Okay. Did you understand him to be the owner?

04:05PM 12 A. Yes.

04:05PM 13 **MR. COOPER:** Can I just have one second, please,

04:06PM 14 Judge?

04:06PM 15 **THE COURT:** Sure.

04:06PM 16 **BY MR. COOPER:**

04:06PM 17 Q. Ma'am, that individual, Craig Border, as you sit here, do

04:06PM 18 you recall where you -- where he lived when you were dating

04:06PM 19 him?

04:06PM 20 A. Yes.

04:06PM 21 Q. Was that on Main Street?

04:06PM 22 A. Yes.

04:06PM 23 Q. Do you remember the exact address?

04:06PM 24 A. It was the Sidway Building.

04:06PM 25 Q. What's that?

1 A. It was the Sidway Building --

2 Q. Okay.

3 A. -- before it was U.B., whatever they have there.

4 Q. Got it.

5 **MR. COOPER:** I have no further direct. Thank you,
6 Judge.

7 **THE COURT:** Okay. Cross?

8

9 **CROSS-EXAMINATION BY MR. SINGER:**

10 Q. Hi, Ms. R.A.

11 A. Hi.

12 Q. So, you testified on direct that you first met Joe

13 Bongiovanni through Peter Gerace.

14 A. Yes.

15 Q. And that particular photograph that we saw of you four at

16 the restaurant, that was something that was taken right

17 around the same time that you started a relationship with

18 Peter Gerace?

19 A. Yes.

20 Q. So at that particular dinner, was anyone using drugs?

21 A. No.

22 Q. You came to learn that Peter and Joe Bongiovanni, they

23 were friends based on having a relationship for a number of

24 years?

25 A. Yes.

04:07PM 1 Q. And you dated Peter Gerace starting in 2005; is that
04:07PM 2 right?

04:07PM 3 A. Yes.

04:07PM 4 Q. When was it that your relationship with Peter Gerace
04:07PM 5 ended?

04:07PM 6 A. Well, it was very tumultuous. It probably lasted about
04:07PM 7 seven or eight years on and off.

04:07PM 8 Q. Okay. So it was an on-again-off-again situation?

04:07PM 9 A. Yes.

04:07PM 10 Q. You mentioned that you had a child together; is that
04:07PM 11 right?

04:07PM 12 A. Yes.

04:07PM 13 Q. When was it that your son was born, again?

04:07PM 14 A. 2006.

04:07PM 15 Q. And how soon after your son was born did things start to
04:08PM 16 kind to become on and off with Peter?

04:08PM 17 A. Pretty much immediately.

04:08PM 18 Q. Okay. So you were on again and off again from 2006
04:08PM 19 onward?

04:08PM 20 A. Yes.

04:08PM 21 Q. All right. Now you recall that when you first started
04:08PM 22 dating Peter in 2005, that's when you saw Mr. Bongiovanni
04:08PM 23 more often?

04:08PM 24 A. Yes.

04:08PM 25 Q. But as your relationship progressed throughout the years,

04:08PM 1 you didn't see him as often?

04:08PM 2 A. No.

04:08PM 3 Q. You talked about a time where you, Peter, Joe, and his

04:08PM 4 girlfriend went down to Ellicottville?

04:08PM 5 A. Yes.

04:08PM 6 Q. And so Ellicottville, it's kind of like a ski town about

04:08PM 7 an hour south of here?

04:08PM 8 A. Yes.

04:08PM 9 Q. A bunch of shops and restaurants?

04:08PM 10 A. Yeah, shops and restaurants.

04:08PM 11 Q. Did you guys spend the night there, or did you just go

04:08PM 12 down there for the day?

04:08PM 13 A. We spent the night there.

04:08PM 14 Q. And was that just for a weekend?

04:08PM 15 A. Yes.

04:09PM 16 Q. Was that particular trip something that happened in 2005

04:09PM 17 before you got pregnant?

04:09PM 18 A. Yes.

04:09PM 19 Q. You also mentioned that you went to Niagara-on-the-Lake?

04:09PM 20 A. Yes.

04:09PM 21 Q. And that sounded like it was just a day trip?

04:09PM 22 A. Yeah.

04:09PM 23 Q. And I think you said that you did some horse-drawn

04:09PM 24 carriage and also went to some wineries?

04:09PM 25 A. Yes.

04:09PM 1 Q. And that you had some dinner?

04:09PM 2 A. Yes.

04:09PM 3 Q. And then you crossed the border and went on your separate

04:09PM 4 ways?

04:09PM 5 A. Yes.

04:09PM 6 Q. And so as far as Mr. Bongiovanni was concerned, you

04:09PM 7 wouldn't see him every day of the week --

04:09PM 8 A. No.

04:09PM 9 Q. -- when you were dating Peter?

04:09PM 10 A. No.

04:09PM 11 Q. No?

04:09PM 12 A. No.

04:09PM 13 Q. Safe to say you'd see him maybe one or two times a month?

04:09PM 14 A. Yeah, safe to say that. Maybe every other weekend, so,

04:09PM 15 yes.

04:09PM 16 Q. And in the context that you'd see him, you'd see in kind

04:09PM 17 of a social situation like a bar or restaurant?

04:10PM 18 A. Yes.

04:10PM 19 Q. Did you ever see him use any type of illegal substances?

04:10PM 20 A. Never.

04:10PM 21 Q. Did you and Peter ever use illegal substances in his

04:10PM 22 presence?

04:10PM 23 A. Never.

04:10PM 24 Q. Peter also had another friend Dan Derenda; is that right?

04:10PM 25 A. Yes.

04:10PM 1 Q. And Daniel Derenda, he was the commissioner of police for
04:10PM 2 Buffalo?

04:10PM 3 A. Um-hum.

04:10PM 4 Q. I think he had a relationship with Peter based on the
04:10PM 5 fact that Mr. Derenda was a godfather to one of Peter's
04:10PM 6 children?

04:10PM 7 A. Yes.

04:10PM 8 Q. Is that your son?

04:10PM 9 A. No.

04:10PM 10 Q. Okay. How often would you see Peter hanging out with Dan
04:10PM 11 Derenda?

04:10PM 12 **MR. COOPER:** Objection, relevance.

04:10PM 13 **THE COURT:** Overruled.

04:10PM 14 **THE WITNESS:** Not very often.

04:10PM 15 **BY MR. SINGER:**

04:10PM 16 Q. Was it kind of the same frequency as you saw Peter
04:10PM 17 hanging out with Joseph Bongiovanni?

04:10PM 18 A. Yes, but less.

04:10PM 19 Q. You talked a little bit about your experience within the
04:11PM 20 strip club industry?

04:11PM 21 A. Yes.

04:11PM 22 Q. And I think one of the things that you mentioned --

04:11PM 23 Excuse me, let me just get my pad.

04:11PM 24 -- one of the things you mentioned on direct is it was
04:11PM 25 very difficult to work a job like that sober; do you remember

04:11PM 1 testifying to that?

04:11PM 2 A. Yes.

04:11PM 3 Q. And in your experience, I think you also testified that

04:11PM 4 drug use is very common at exotic clubs like that?

04:11PM 5 A. Yes.

04:11PM 6 Q. And I think you also testified that based on the nature

04:11PM 7 of the work, and based on some of the pressures associated

04:11PM 8 with it, you started to use narcotics more often as time

04:11PM 9 progressed in the industry?

04:11PM 10 A. Yes.

04:11PM 11 Q. Was that your experience that other women who worked in

04:11PM 12 the industry would kind of go down a similar path?

04:11PM 13 A. Absolutely.

04:11PM 14 Q. Is that somewhat the culture that exists inside exotic

04:12PM 15 dance clubs?

04:12PM 16 **MR. COOPER:** Objection as to culture.

04:12PM 17 **THE COURT:** Go ahead.

04:12PM 18 **MR. COOPER:** There's one club that's at issue in this

04:12PM 19 trial. The culture in other clubs is not relevant to this

04:12PM 20 proceeding.

04:12PM 21 **THE COURT:** Yeah. Overruled.

04:12PM 22 **THE WITNESS:** It's common through strip clubs

04:12PM 23 everywhere in America.

04:12PM 24 **BY MR. SINGER:**

04:12PM 25 Q. Do you know a person by the name of Katrina Nigro?

04:12PM 1 A. Yes.

04:12PM 2 Q. How do you know Ms. Nigro?

04:12PM 3 A. I used to dance with her in the early 2000s. She owned a

04:12PM 4 clothing store, I bought some exotic clothing costumes from

04:12PM 5 her.

04:12PM 6 Q. So what year do you think you first met Ms. Nigro?

04:13PM 7 A. 2003 or 2004.

04:13PM 8 Q. And how -- I guess, was there a point in time where you

04:13PM 9 stopped seeing Ms. Nigro?

04:13PM 10 A. Yes.

04:13PM 11 Q. When do you think you stopped seeing Ms. Nigro? When did

04:13PM 12 that time occur?

04:13PM 13 A. What do you mean, stopped seeing her?

04:13PM 14 Q. Sure. So I guess I think you just testified that you

04:13PM 15 first met her in 2003; is that right?

04:13PM 16 A. Yes.

04:13PM 17 Q. And then after meeting her in 2003, you'd see her, it

04:13PM 18 sounds like, in work situations?

04:13PM 19 A. Yes, in work situations.

04:13PM 20 Q. You testified that she sold different types of clothing?

04:13PM 21 A. Um-hum.

04:13PM 22 Q. Were you a customer at her store?

04:13PM 23 A. Yes.

04:13PM 24 Q. And you also saw her at various clubs that you worked at?

04:13PM 25 A. Yes.

04:13PM 1 Q. And we're not talking about Pharaoh's Gentlemen's Club,
04:13PM 2 correct?

04:13PM 3 A. No.

04:13PM 4 Q. We're talking about other locations?

04:13PM 5 A. Yes.

04:13PM 6 Q. Were those locations within the City of Buffalo?

04:13PM 7 A. No.

04:13PM 8 Q. Where are those locations at?

04:13PM 9 A. Erie, Pennsylvania. Rochester.

04:13PM 10 Q. Would you go down to -- trips to Erie, Pennsylvania, or
04:14PM 11 out to Rochester with Ms. Nigro?

04:14PM 12 A. Yes.

04:14PM 13 Q. Would the two of you drive together?

04:14PM 14 A. I'm not sure if we drove together, it was a long time
04:14PM 15 ago. But we, like, we would -- she would message me and tell
04:14PM 16 me this club is, you know, I'm working here tonight, or
04:14PM 17 there's money here, so I would obviously go to that club.

04:14PM 18 **MR. COOPER:** Judge, I'm going to object at this point
04:14PM 19 to relevance on this line of questioning.

04:14PM 20 **THE COURT:** Yes, I'm not getting the relevance
04:14PM 21 either.

04:14PM 22 **MR. SINGER:** May we approach, Judge?

04:14PM 23 **THE COURT:** Yeah, come on up.

04:14PM 24 (Sidebar discussion held on the record.)

04:14PM 25 **THE COURT:** I'm giving you real wide berth in cross.

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25	A. Yes.
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04:16PM 1 Q. It was a son who was born in 2006?

04:16PM 2 A. Yes.

04:16PM 3 Q. So after you said things started to get rocky with Peter,
04:16PM 4 you said it was a little on and off?

04:16PM 5 A. Yes.

04:16PM 6 Q. For a couple different years?

04:16PM 7 A. Um-hum.

04:17PM 8 Q. And during that period of time, did Peter start dating
04:17PM 9 Katrina Nigro at some point?

04:17PM 10 A. Yes.

04:17PM 11 Q. So when Peter was dating Katrina Nigro, what type of
04:17PM 12 interactions did you have with Ms. Nigro during that period?

04:17PM 13 A. I didn't have the best interactions with her, but I did
04:17PM 14 have to be civil with her because she was with my son and she
04:17PM 15 was with Peter.

04:17PM 16 Q. And how often would you see Ms. Nigro during that period?

04:17PM 17 A. I really didn't see her very often. It was more like
04:17PM 18 phone conversations, or through Messenger. And, truthfully,
04:17PM 19 I really didn't -- I would prefer not to talk to her, I would
04:17PM 20 rather talk to Peter --

04:17PM 21 Q. Okay.

04:17PM 22 A. -- concerning my child.

04:17PM 23 Q. But there were some type of interactions that you had
04:17PM 24 with her during that period that she dated Peter?

04:17PM 25 A. Yes.

04:17PM 1 Q. What years do you think that occurred as far as your
04:17PM 2 interaction with Katrina Nigro?

04:17PM 3 A. Like 2015, 2016.

04:17PM 4 Q. As far as your relationship, I'm sorry -- strike that.

04:17PM 5 As far as the child custody arrangement between you and
04:18PM 6 Peter at the time with your son, what was the arrangement at
04:18PM 7 that time?

04:18PM 8 A. At that time, they had -- he had joint custody with my
04:18PM 9 parents.

04:18PM 10 Q. And so how often would you interact with Peter regarding
04:18PM 11 custody matters involving your son?

04:18PM 12 A. I mean, there really -- we didn't really interact that
04:18PM 13 much about it. Are you talking about visitation, or --

04:18PM 14 Q. Yeah, visitation.

04:18PM 15 A. Yeah. We had an open communication, so on a weekly
04:18PM 16 basis.

04:18PM 17 Q. How often would you see Peter to visit your son?

04:18PM 18 A. On a weekly basis.

04:18PM 19 Q. And during these times that you would interact with
04:18PM 20 Peter, I think you testified that you also interacted with
04:18PM 21 Katrina sometimes?

04:18PM 22 A. Yes.

04:18PM 23 Q. It wasn't necessarily always by your choice, right?

04:18PM 24 A. Yes.

04:18PM 25 Q. But you still interacted with her?

04:18PM 1 A. Um-hum.

04:18PM 2 Q. Would you have conversations with her?

04:19PM 3 A. Yeah, but they were far and few between.

04:19PM 4 Q. And as far as your time in the exotic dancing business,

04:19PM 5 when was it that you first got involved in the exotic dancing

04:19PM 6 business?

04:19PM 7 A. When was it that I got involved?

04:19PM 8 Q. Yeah, year-wise.

04:19PM 9 A. Between 2002, 2003.

04:19PM 10 Q. And when was it that you left the exotic dancing

04:19PM 11 business?

04:19PM 12 A. Why did I leave?

04:19PM 13 Q. No, not why. When was it that you left?

04:19PM 14 A. 2006.

04:19PM 15 Q. And so during the time period that you were on the road

04:19PM 16 with Ms. Nigro either in Rochester or Erie, Pennsylvania, you

04:19PM 17 testified that you hung around with her, correct?

04:19PM 18 A. Um-hum.

04:19PM 19 Q. Did you also hang around with Ms. Nigro back here in the

04:19PM 20 City of Buffalo at various other establishments other than

04:19PM 21 Pharaoh's?

04:19PM 22 A. Yes.

04:19PM 23 Q. And how often would you see her in those establishments?

04:19PM 24 A. It depended on when I worked. I mean, if I worked five

04:20PM 25 days a week, sometimes I would see her all five days,

04:20PM 1 sometimes I would see her two days.

04:20PM 2 Q. And as far as work interaction, you talked a little bit
04:20PM 3 about how you would interact with her at work. How was it
04:20PM 4 that you interacted with Ms. Nigro at work? What kind of
04:20PM 5 context?

04:20PM 6 A. The context usually was to do with, like, customers, or
04:20PM 7 making money, or drinking.

04:20PM 8 Q. So in one context, would you two maybe speak to each
04:20PM 9 other when you were waiting to get on the stage?

04:20PM 10 A. Yes.

04:20PM 11 Q. And in another context, would you two speak to each other
04:20PM 12 when you were around the club when you were interacting with
04:20PM 13 customers?

04:20PM 14 A. Yes.

04:20PM 15 Q. And during this period, did you form an opinion with
04:20PM 16 regard to Ms. Nigro's character and truthfulness?

04:20PM 17 A. Absolutely.

04:20PM 18 **MR. COOPER:** Judge, I'd object at this point. Can we
04:20PM 19 come up?

04:20PM 20 **THE COURT:** Sure.

04:20PM 21 (Sidebar discussion held on the record.)

04:21PM 22 **MR. COOPER:** What's permissible is opinion and
04:21PM 23 reputation, not the person's, not -- I don't believe that the
04:21PM 24 foundation has been properly laid to elicit what the question
04:21PM 25 that was asked.

04:21PM 1 **THE COURT:** Did you form an opinion with respect to
04:21PM 2 Ms. Nigro's character and truthfulness.
04:21PM 3 **MR. TRIPI:** I didn't think he said truthfulness.
04:21PM 4 **THE COURT:** He said character and truthfulness.
04:21PM 5 **MR. SINGER:** Character for truthfulness.
04:21PM 6 **THE COURT:** For truthfulness. Yes, I think that's
04:21PM 7 fine.
04:21PM 8 **MR. COOPER:** Character for truthfulness.
04:21PM 9 **THE COURT:** Right.
04:21PM 10 **MR. COOPER:** Character --
04:21PM 11 **MR. TRIPI:** I didn't hear the -- after the --
04:21PM 12 anything after the word.
04:21PM 13 **MR. COOPER:** I think the word was "and," not "for,"
04:21PM 14 so --
04:21PM 15 **THE COURT:** It says "and." You meant to say "for?"
04:21PM 16 **MR. SINGER:** I thought I said "for."
04:21PM 17 **MR. TRIPI:** I didn't hear the word "truthfulness"
04:21PM 18 either.
04:21PM 19 **THE COURT:** No, "truthfulness" he said.
04:21PM 20 **MR. TRIPI:** Okay.
04:21PM 21 **THE COURT:** I'm reading "truthfulness."
04:21PM 22 **MR. TRIPI:** Okay. My fault.
04:21PM 23 **THE COURT:** So, and a witness's credibility may be
04:21PM 24 attacked or supported by the testimony about the witness's
04:21PM 25 reputation, or having a character for truthfulness or

1 untruthfulness, or by testimony in the form of an opinion
2 about that character that is for truthfulness or
3 untruthfulness.

4 So I will sustain the objection to the form of the
5 question because it says "and" --

6 **MR. SINGER:** Okay.

7 **THE COURT:** -- and you can re-ask.

8 (End of sidebar discussion.)

9 **THE COURT:** The objection to the form of the question
10 is sustained. You can ask another question.

11 **BY MR. SINGER:**

12 Q. So I think I may have said "and" by mistake, so let me
13 re-ask the question again, Ms. R.A.

14 Did you form an opinion with regard to the character for
15 truthfulness of Ms. Nigro during this period?

16 A. Yes, I did.

17 Q. And what is your opinion?

18 A. I think she's a compulsive liar, and I think she's
19 untruthful.

20 Q. So you also mentioned that you worked a lot with
21 Ms. Nigro, correct?

22 A. Yes.

23 Q. How many different clubs do you think you worked with
24 Ms. Nigro during that 2003 to 2006 time period?

25 A. Three or four.

04:22PM 1 Q. And did you interact with other dancers during that
04:22PM 2 period?

04:22PM 3 A. Yes.

04:22PM 4 Q. Did Ms. Nigro interact with other dancers during that
04:23PM 5 period?

04:23PM 6 A. Yes.

04:23PM 7 Q. And you said that you worked in the same clubs as
04:23PM 8 Ms. Nigro?

04:23PM 9 A. Yes.

04:23PM 10 Q. How often would you think you saw her in those clubs
04:23PM 11 during that specific time period?

04:23PM 12 A. A week, are you talking?

04:23PM 13 Q. You know, during that 2003 to 2006 time period, how often
04:23PM 14 do you think you saw her inside the clubs and inside the
04:23PM 15 establishments you worked at?

04:23PM 16 A. I mean, that's in a two-year period you're asking?

04:23PM 17 Q. Yeah.

04:23PM 18 A. Almost -- over 20 times.

04:23PM 19 Q. And to your knowledge, did Ms. Nigro have a reputation
04:23PM 20 within that community as far as her truthfulness?

04:23PM 21 A. Yes.

04:23PM 22 Q. What was that reputation?

04:23PM 23 **MR. COOPER:** Objection. Improper foundation. Again,
04:23PM 24 I'd like to come up, Judge.

04:23PM 25 **THE COURT:** Sure. Come on up.

(Sidebar discussion held on the record.)

MR. COOPER: It's my understanding that the proper -- or, the necessary foundation for this line of questioning is about did you have conversations with other people in that community regarding this character trait eliciting, when those conversations were, who they occurred with.

I don't think we have any of that.

THE COURT: How does she know?

MR. SINGER: I can lay a better foundation.

THE COURT: Okay.

(End of sidebar discussion.)

THE COURT: The objection is sustained.

BY MR. SINGER:

Q. Ms. Nigro (sic), when you were working inside the clubs during that time period, did you speak with other individuals inside the clubs about Ms. Nigro?

A. Yes.

Q. And more specifically, did you have conversations with other people inside of those clubs regarding their particular thoughts on Ms. Nigro's truthfulness or untruthfulness?

A. Yes.

Q. How many people do you think you've spoken to in that time period about Ms. Nigro's character for truthfulness?

A. Quite a few. The dancers there, whether or not, like, if a customer -- like, she burned a customer or whatever, I

mean, it's a very intricate kind of, like, the club circuit is very intricate. So you find things out very fast.

Q. And so we're talking about multiple conversations you had with multiple people over that time period?

A. Yes.

Q. And they were focused on Ms. Nigro?

A. Yes.

Q. And they were focused on her character for truthfulness or untruthfulness?

A. Yes.

Q. And did you form an opinion regarding what her reputation in the community was with regard to her character for truthfulness?

A. I think she's a dishonest con artist.

MR. COOPER: Objection. I'd ask to strike that answer --

THE COURT: Yeah.

MR. COOPER: -- as not responsive to the question.

THE COURT: That answer is stricken.

Listen to the question --

THE WITNESS: Okay.

THE COURT: -- and answer the question, please.

The jury is not to consider that in your deliberations.

Go ahead, Mr. Singer.

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BY MR. SINGER:

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Q. Thank you. So again, we -- we already got through what

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your particular opinion is.

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A. Okay.

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Q. What I want to focus on is just Ms. Nigro's reputation

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with the other people that you spoke with, and interacted

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with in the exotic dancing community.

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A. Okay.

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Q. Did you have information which led you to conclude what

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Katrina Nigro's reputation was within the exotic dancing

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community regarding her character for truthfulness?

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A. Untruthful.

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Q. And that -- was that the reputation she had?

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A. Yes.

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MR. SINGER: Okay. Thank you. I have no further

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questions, Judge.

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MR. COOPER: Judge, I'm going to start with the some

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cross-examination from the adoption of the witness and --

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THE COURT: Yep.

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MR. COOPER: -- then maybe circle back.

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THE COURT: Go right ahead.

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CROSS-EXAMINATION BY MR. COOPER (From Gov't Adopted Case):

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Q. Ma'am, you have a child with Peter Gerace, you told the

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jury before, that was in 2006, right?

04:26PM 1 A. Yes.

04:26PM 2 Q. Okay. And Peter's still involved in your child's life,

04:26PM 3 right?

04:26PM 4 A. Yes.

04:26PM 5 Q. And you care about your child, right?

04:26PM 6 A. Yes.

04:26PM 7 Q. And during the time from, let's say, 2006 to 2024, is

04:26PM 8 that 18 years?

04:26PM 9 A. Yes.

04:26PM 10 Q. Okay. So for 18 years, you've had an association with

04:26PM 11 Peter, right?

04:27PM 12 A. Yes.

04:27PM 13 Q. Whether willingly or unwillingly, I guess, right?

04:27PM 14 A. Yes.

04:27PM 15 Q. And you've had an association with Peter's family, right?

04:27PM 16 A. Yes.

04:27PM 17 Q. And Peter gives you money for his kid, right?

04:27PM 18 A. No.

04:27PM 19 Q. No, that doesn't happen?

04:27PM 20 A. No.

04:27PM 21 Q. Did Peter ever give you money for your child with him?

04:27PM 22 A. No.

04:27PM 23 Q. That never happened?

04:27PM 24 A. I -- I -- no. He had -- no. Because I don't have

04:27PM 25 custody of my child. My family does. My mom does.

04:27PM 1 Q. Does Peter -- maybe I phrased that question poorly.

04:27PM 2 Has Peter ever, since your child was born, financially
04:27PM 3 supported your child?

04:27PM 4 A. Yes.

04:27PM 5 Q. Is that a --

04:27PM 6 A. Sorry, sir.

04:27PM 7 Q. That's okay. Are you okay?

04:27PM 8 A. Yes.

04:27PM 9 Q. Is that important to you?

04:27PM 10 A. Yes.

04:27PM 11 Q. Okay. And you're --

04:27PM 12 **MR. COOPER:** Can we come up real quick? I'm sorry.

04:27PM 13 **THE COURT:** Sure.

04:27PM 14 **MR. COOPER:** I want to be cautious here.

04:27PM 15 (Sidebar discussion held on the record.)

04:27PM 16 **MR. COOPER:** I just want to be cautious here.

04:27PM 17 I don't think this is improper, but she's come to
04:27PM 18 court for Peter, sat on Peter's side of the courtroom,
04:27PM 19 appeared at court appearances.

04:27PM 20 I'm about to say Peter has a court case, and I just
04:28PM 21 want to front that for everybody.

04:28PM 22 I think it's clear from the indictment as well, and I
04:28PM 23 just want to front it. So, if you want to object, object.

04:28PM 24 But --

04:28PM 25 **MR. SINGER:** Yeah, again, I mean, I object on 403

04:28PM 1 grounds, Judge. I just think that the danger of unfair
04:28PM 2 prejudice to Mr. Bongiovanni --

04:28PM 3 (Simultaneous talking.)

04:28PM 4 **MR. COOPER:** This door got opened --

04:28PM 5 **THE COURT:** Stop. I think you can ask have you been
04:28PM 6 to court for a court case that Peter has.

04:28PM 7 You need to link it to this.

04:28PM 8 **MR. COOPER:** Absolutely. Yeah. It's the substance
04:28PM 9 of this case, her child's father is charged in the case.

04:28PM 10 **MR. SINGER:** Count 2 of --

04:28PM 11 (Indecipherable speech.)

04:28PM 12 **MR. COOPER:** It's bias. I have to be able to explore
04:28PM 13 bias when this line of questioning comes out. It didn't
04:28PM 14 happen last time, so I didn't front it. But I've got to --

04:28PM 15 **THE COURT:** Yeah, I think you can do that.

04:28PM 16 **MR. SINGER:** So the bias, I think, Judge, though, if
04:28PM 17 they're probing on bias is that she showed up and supported
04:28PM 18 him in court. I don't think you need to get into the
04:29PM 19 particular case --

04:29PM 20 **MR. COOPER:** It's way more bias when it's this case.

04:29PM 21 **MR. TRIPI:** She's got a rooting interest in this case
04:29PM 22 as it relates to Peter --

04:29PM 23 **THE COURT:** As it relates --

04:29PM 24 **MR. TRIPI:** -- and Katrina is linked heavily, as you
04:29PM 25 know, to that case as well. The charges overlap with this

04:29PM 1 defendant, because Peter is charged with bribing this
04:29PM 2 defendant in this case, and charged with conspiring in Count 2
04:29PM 3 of this case.

04:29PM 4 **THE COURT:** Okay. But why does that have to be
04:29PM 5 related to this case.

04:29PM 6 **MR. COOPER:** Judge --

04:29PM 7 **THE COURT:** Just listen. Just listen to me for just
04:29PM 8 a second.

04:29PM 9 Why isn't the fact that she knows that there is
04:29PM 10 another case against Peter in which Nigro is a witness, why
04:29PM 11 isn't that enough? Why does it have to be related to this
04:29PM 12 particular case?

04:29PM 13 **MR. COOPER:** Because Nigro's testifying against this
04:29PM 14 particular defendant in this particular case that's linked to
04:29PM 15 her husband -- that's linked to -- they're inextricably
04:29PM 16 intertwined. The bias is inextricably intertwined. And I
04:30PM 17 didn't bring this up --

04:30PM 18 **THE COURT:** Right.

04:30PM 19 **MR. COOPER:** -- and it didn't come up at the last
04:30PM 20 trial, so I wasn't prepared to front it for the Court.

04:30PM 21 I'm sure Mr. Singer knew he was gonna do it, I'm sure
04:30PM 22 he intentionally didn't tell me, so now we're making the
04:30PM 23 argument up here.

04:30PM 24 But it's fair game, Judge, when they --

04:30PM 25 **THE COURT:** I think it is fair game.

2 | (End of sidebar discussion.)

4 Q. Peter's charged with conduct that got him charged here in
5 federal court, right?

7 | Q. And you're aware of that, right?

9 | Q. And you've been aware of it since it happened, right?

11 Q. And you've got some pretty strong feelings about it,
12 right?

14 Q. Not happy about it, right, ma'am?

16 Q. Okay. And you're aware that the conduct is some of the
17 same conduct that's being discussed here in this case, right?

19 Q. And you're aware that a lot of the witnesses that are in
20 the case involving your child's father are the same witnesses
21 that will be here in this case, right?

23 Q. Okay. And you've shown up in court on Peter's case
24 before, right?

25	A. Yes.
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04:31PM 1 Q. And you've walked in and sat with his family behind him,
04:31PM 2 right?

04:31PM 3 A. Yes.

04:31PM 4 Q. Okay. So fair to say you have a rooting interest in the
04:31PM 5 outcome of the case against Peter, right, ma'am?

04:31PM 6 A. A rooting outcome?

04:31PM 7 Q. A rooting interest. You'd like to see something happen
04:31PM 8 in that case, right?

04:31PM 9 A. Like, what would I like to see? What are you implying?

04:31PM 10 Q. Well, no, no.

04:31PM 11 A. I'm sorry.

04:31PM 12 Q. I'm asking you, just be honest with the jury here, not
04:31PM 13 hard, do you have a rooting interest in the outcome of the
04:31PM 14 case against Peter?

04:31PM 15 A. Yes.

04:31PM 16 Q. Yes, you do, right?

04:31PM 17 And that's causing you to have some bias when you talk
04:31PM 18 about Ms. Nigro, right, ma'am?

04:31PM 19 A. No.

04:31PM 20 Q. You dislike Ms. Nigro, right?

04:31PM 21 A. Do I dislike her? I don't like her character.

04:31PM 22 Q. So my --

04:31PM 23 A. And I know some of --

04:31PM 24 Q. Ma'am, I'm going to ask questions. And I'd ask for
04:31PM 25 you -- I'm going to be respectful to you, and I'd ask that

04:31PM 1 you be respectful to me.

04:31PM 2 A. Okay.

04:31PM 3 Q. And we'll work through it, okay?

04:31PM 4 Just a simple "yes" or "no": Do you dislike Ms. Nigro?

04:31PM 5 A. Yes.

04:31PM 6 Q. Okay. And you have strong feelings for Peter Gerace,

04:31PM 7 right?

04:31PM 8 A. No.

04:31PM 9 Q. No? You sure?

04:31PM 10 A. I don't have strong feelings for him.

04:32PM 11 Q. Okay. You show up in court, and you sit with his family,

04:32PM 12 right?

04:32PM 13 A. For support of my son, I'm his mother.

04:32PM 14 Q. Okay. So my question is: Do you show up in court and

04:32PM 15 sit with his family?

04:32PM 16 A. Once.

04:32PM 17 Q. Okay. That's a yes, right?

04:32PM 18 A. Yes.

04:32PM 19 Q. Okay. So you sit there. And the reason that you show up

04:32PM 20 is to show support for Peter in front of his family, right,

04:32PM 21 ma'am?

04:32PM 22 A. No, it's to show support for my son.

04:32PM 23 Q. Okay. It's not your son who's charged in the case,

04:32PM 24 right?

04:32PM 25 A. I understand that, but it is his father.

04:32PM 1 Q. Okay. You talked about these conversations that you had
04:32PM 2 with other people about Ms. Nigro, right?

04:32PM 3 A. Yes.

04:32PM 4 Q. Can you name the people that you've had these
04:32PM 5 conversations with?

04:32PM 6 A. Customers, other dancers.

04:32PM 7 Q. Names, ma'am. Do you know what a -- a name. Do you know
04:32PM 8 their names?

04:32PM 9 A. Name? No.

04:32PM 10 Q. One name, you can't give?

04:32PM 11 A. It was too long ago, no, I don't know any names.

04:32PM 12 Q. Not a single one?

04:32PM 13 A. Do you want stage names?

04:32PM 14 Q. No, no, no. I'm asking you: Mr. Singer just asked you
04:32PM 15 all these questions, you were happy to answer them, and you
04:32PM 16 were explaining all these various people that you had these
04:32PM 17 conversations with about Katrina Nigro's character for
04:32PM 18 truthfulness --

04:32PM 19 A. Well, it's really not --

04:33PM 20 Q. Ma'am, I'm still asking a question, so wait until I
04:33PM 21 finish the question, and then answer it, okay?

04:33PM 22 I'm going to be respectful to you, but I need to finish
04:33PM 23 my questions, okay?

04:33PM 24 A. Okay.

04:33PM 25 Q. Mr. Singer asked you questions about all the different

1 people that you had these conversations with.

2 A. Um-hum.

3 Q. What I'm asking you to do is tell them one name.

4 A. I don't know one name.

5 Q. Okay.

6 Before you came here to testify, we've met and we've
7 prepared and we've gone over some questions and answers,
8 right?

9 A. Yes.

10 Q. Okay. And during those times, we've never had any
11 consternation like this before, right?

12 A. No.

13 Q. Okay. You've been treated with respect by the FBI agents
14 when they've interviewed you or came to talk to?

15 **MR. SINGER:** Objection, relevance.

16 **MR. COOPER:** I'll move on Judge.

17 **BY MR. COOPER:**

18 Q. Let me ask you a question.

19 Your child's grandmother, would it be fair to say that
20 the charges against Peter have been pretty devastating for
21 that person?

22 A. Yes.

23 Q. Okay. And would it be a fair statement to say that the
24 charges against Peter have been devastating for your son?

25 A. Yes.

04:34PM 1 Q. Your son's been -- and I'm not trying to make light of
04:34PM 2 this at all, but your son's been bullied in school as a
04:34PM 3 result of having human trafficking charges pending against
04:34PM 4 his father, right?

04:34PM 5 A. Yes.

04:34PM 6 Q. That's upsetting to you, right?

04:34PM 7 A. Of course.

04:34PM 8 Q. I understand that.

04:34PM 9 Before you came up here to testify today, you knew that
04:34PM 10 Ms. Nigro was a witness in this case, right?

04:34PM 11 A. Yes, it's in the newspapers.

04:34PM 12 Q. Okay. So I'm just asking if you're aware of it, that's
04:34PM 13 all. You knew that, right?

04:34PM 14 A. Yes.

04:34PM 15 Q. Okay. If Ms. Nigro said Joe Bongiovanni is friends with
04:35PM 16 Peter Gerace, you wouldn't have any reason to disagree with
04:35PM 17 that, right?

04:35PM 18 A. No.

04:35PM 19 Q. None at all, right?

04:35PM 20 A. No.

04:35PM 21 Q. Okay. During the timeframe that Mr. Singer asked you
04:35PM 22 about when you were, I think, seeing Peter on a weekly basis
04:35PM 23 to have visitation with your son, like 2015, 2016 is that
04:35PM 24 when you were sometimes interacting with Ms. Nigro?

04:35PM 25 A. Yes.

04:35PM 1 Q. Would it be fair to say during that time Ms. Nigro was
04:35PM 2 seeing a lot more of Peter Gerace than you were?

04:35PM 3 A. Yes.

04:35PM 4 Q. Okay. And at that name your life, 2015, 2016, were you
04:35PM 5 at Pharaoh's frequently?

04:35PM 6 A. Never.

04:35PM 7 Q. Not at all?

04:35PM 8 A. Not at all.

04:35PM 9 Q. Okay. Do you think Katrina was at Pharaoh's at that
04:35PM 10 time?

04:35PM 11 A. Yes.

04:35PM 12 Q. Okay. So would it be a fair statement for me to say you
04:35PM 13 couldn't tell this jury anything about what was happening at
04:35PM 14 Pharaoh's in 2015, could you?

04:35PM 15 A. I could. She posted it on social media.

04:35PM 16 Q. That's not my question.

04:35PM 17 My question is: If could you tell the jury based on your
04:36PM 18 own observations of what was happening inside Pharaoh's?

04:36PM 19 A. No.

04:36PM 20 Q. You couldn't do that, right?

04:36PM 21 A. No.

04:36PM 22 Q. Okay.

04:36PM 23 **THE COURT:** How much more do you have, Mr. Cooper?

04:36PM 24 **MR. COOPER:** I'm not sure, Judge.

04:36PM 25 **BY MR. COOPER:**

Q. Earlier on direct examination, towards the end of the direct examination, I asked you a question about did you have a confrontation with Peter about these photos; do you remember being asked that question?

A. Yes.

Q. Okay. And I asked you if that happened close in time to -- or, the same day, rather, to finding out what the defendant did for work; do you remember that question?

A. Yes.

Q. And you said you didn't think it was the same day; do you remember that?

When I just --

A. Can you --

Q. That you didn't learn what the defendant did for work on the same day that you had this confrontation with Peter about the Playboy Bunny photos; do you remember that?

MR. SINGER: Objection. Outside the scope.

MR. COOPER: Judge, I think --

THE COURT: No, overruled.

BY MR. COOPER:

Q. Do you remember I asked you that on direct?

A. Yes.

Q. And you said you didn't think that happened on the same day?

A. I don't think that happened. But I learned he was a DEA

04:37PM 1 agent --

04:37PM 2 Q. Okay.

04:37PM 3 A. -- on that day particularly.

04:37PM 4 Q. Okay. So that's what I'm getting at, ma'am. The day

04:37PM 5 Peter confronts you about these photos of you in the bunny

04:37PM 6 outfit --

04:37PM 7 A. Yes.

04:37PM 8 Q. -- is that the same day that you learned that this

04:37PM 9 defendant works as a DEA agent?

04:37PM 10 A. Yes.

04:37PM 11 Q. Okay.

04:37PM 12 A. I mean, obviously he -- yeah, he's a --

04:37PM 13 Q. Just yes, right? Is that the answer?

04:37PM 14 A. Yes.

04:37PM 15 Q. Okay.

04:37PM 16 **MR. COOPER:** Can I just have one second, Judge?

04:37PM 17 **THE COURT:** Yes.

04:37PM 18 **BY MR. COOPER:**

04:38PM 19 Q. As you sit here today, were you at the Boss Restaurant

04:38PM 20 with the defendant and Peter Gerace and Katrina Nigro in

04:38PM 21 2016?

04:38PM 22 A. Was I at -- the what?

04:38PM 23 Q. The Boss, a restaurant. Did you go to that?

04:38PM 24 **MR. SINGER:** Objection, outside the scope.

04:38PM 25 **MR. COOPER:** No, Judge.

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THE COURT: How is that --

MR. COOPER: I don't want to argue in front of the jury. I mean, I'll come up.

THE COURT: Come on up. Come on up. Come on up.

(Sidebar discussion held on the record.)

MR. COOPER: So what I'm going to do with -- what I intend to do with this line of questioning, if I'm permitted, is show different access to information, different access to Peter and the defendant.

So Mr. Singer brought up through this impeachment about character and truthfulness, he brought up how much she interacted with Peter, how much she interacted with Katrina, and when those things happened.

I'd like to now clarify on my cross-examination that she wasn't around for other periods of time.

That's directly responsive to the direct that Mr. Singer did.

MR. SINGER: So she -- she already testified to the exact periods that she had interaction with Peter.

THE COURT: Why can't he explore that in response to your cross-examination -- or, direct examination?

MR. SINGER: Because this is going into a totally different direction, Judge. This has nothing to do with how often she would see Peter, or how often she would see Katrina Nigro. It has absolutely nothing to do with that.

04:39PM 1 **MR. COOPER:** Judge, I'm very familiar with the way
04:39PM 2 that you rule on questions for a cross-examination, and I
04:39PM 3 think that this falls squarely within, hey, you went in one
04:39PM 4 direction on direct, now cross gets to show a different piece
04:39PM 5 of that.

04:39PM 6 **MR. SINGER:** But how does the --

04:39PM 7 **MR. COOPER:** That's how cross is.

04:39PM 8 **MR. SINGER:** -- interactions from Boss inform
04:39PM 9 anything about what she testified to? I guess that's where
04:39PM 10 I'm missing the link here.

04:39PM 11 **MR. COOPER:** Because she wasn't there for it, that's
04:39PM 12 the point.

04:39PM 13 He doesn't have to like the question, but it's --

04:39PM 14 **THE COURT:** Easy.

04:40PM 15 **MR. COOPER:** -- responsive to --

04:40PM 16 **THE COURT:** Easy.

04:40PM 17 **MR. COOPER:** -- how much time --

04:40PM 18 **THE COURT:** Easy.

04:40PM 19 **MR. COOPER:** -- they spent together.

04:40PM 20 **THE COURT:** Everybody calm down. Let's do this
04:40PM 21 slowly and logically.

04:40PM 22 So you're trying to show that she doesn't have the
04:40PM 23 kind of access to Katrina Nigro --

04:40PM 24 **MR. COOPER:** To Peter and Katrina during time frames
04:40PM 25 that Katrina came in and offered testimony to this jury about,

04:40PM 1 right? So they choose to --

04:40PM 2 **THE COURT:** Yes.

04:40PM 3 **MR. COOPER:** -- go through this door --

04:40PM 4 **THE COURT:** Okay.

04:40PM 5 **MR. COOPER:** -- without it --

04:40PM 6 **MR. SINGER:** So she --

04:40PM 7 **THE COURT:** But what he's saying is that during these
04:40PM 8 time periods that are crucial to Katrina's testimony, this
04:40PM 9 witness is not having -- is not in contact with her and Peter.

04:40PM 10 **MR. SINGER:** So she testified to the fact that she
04:40PM 11 would interact with Peter and with Katrina during the child
04:40PM 12 care turnover visitations.

04:40PM 13 **THE COURT:** Right.

04:40PM 14 **MR. SINGER:** And that was the extent of her
04:40PM 15 interaction during that period.

04:40PM 16 **THE COURT:** Right.

04:40PM 17 **MR. SINGER:** That's all. So I guess the purpose of a
04:40PM 18 cross is to show a contradiction in that. There's no
04:40PM 19 contradiction --

04:40PM 20 **THE COURT:** No, no, no. I don't think so. I think
04:40PM 21 the purpose of the cross is to show that the interaction was
04:41PM 22 even more limited, and of course he can do that.

04:41PM 23 **MR. COOPER:** Thank you.

04:41PM 24 (End of sidebar discussion.)
25

04:41PM

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BY MR. COOPER:

04:41PM

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Q. You need another water?

04:41PM

3

A. No, I'm good. Thank you.

04:41PM

4

Q. Okay. I need some water. Give me one second.

04:41PM

5

Were you invited to a dinner with Joe Bongiovanni, Peter Gerace, and Katrina Nigro in 2016?

04:41PM

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04:41PM

7

A. No.

04:41PM

8

Q. Okay. Did you attend a dinner with those people in 2016?

04:41PM

9

A. No.

04:41PM

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Q. So do you know what happened there?

04:41PM

11

A. No.

04:41PM

12

Q. Okay. Did you work at Pharaoh's Gentlemen's Club between 2013 and 2016?

04:41PM

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04:41PM

14

A. No.

04:41PM

15

Q. Katrina worked there during that timeframe, right?

04:41PM

16

A. Yes.

04:41PM

17

Q. Thank you.

04:41PM

18

You didn't interact with Ms. Nigro -- with Ms. Nigro for years directly at all, right?

04:41PM

19

04:41PM

20

Years would go by where you didn't interact with her at all, right?

04:41PM

21

04:41PM

22

A. Yes.

04:41PM

23

Q. Okay. As you sit here today, you're not aware of whether there's text messages about a dinner that occurred at the Boss Restaurant in 2016, right?

04:42PM

24

04:42PM

25

04:42PM 1 A. No.

04:42PM 2 Q. You never saw those?

04:42PM 3 A. I never saw text messages.

04:42PM 4 Q. You wouldn't know if they exist, right?

04:42PM 5 A. No.

04:42PM 6 Q. You're not aware of whether Joe Bongiovanni ever texted

04:42PM 7 Peter Gerace and said, hey, what's your address so I can send

04:42PM 8 you a thank you card?

04:42PM 9 You don't know if that happened, right?

04:42PM 10 A. No.

04:42PM 11 Q. Okay. And you weren't there for the dinner, so you don't

04:42PM 12 know what happened at the dinner either, right?

04:42PM 13 A. No.

04:42PM 14 Q. Okay. You testified on one of your examinations, I don't

04:42PM 15 recall which one, about women who work in exotic dance clubs

04:42PM 16 using drugs, right?

04:42PM 17 A. Yes.

04:42PM 18 Q. That's something that happens, right?

04:42PM 19 A. Yes.

04:42PM 20 Q. Have you seen women that work in exotic dancing clubs

04:42PM 21 that have track marks on their arms?

04:42PM 22 A. I haven't seen that personally.

04:42PM 23 Q. Okay.

04:42PM 24 A. I mean, I worked before the opiate epidemic, so I didn't

04:42PM 25 see that.

04:42PM 1 Q. Got it. Did you see woman who showed signs of severe
04:43PM 2 drug addiction working at those clubs?

04:43PM 3 A. Yes.

04:43PM 4 Q. Did you see drugs distributed at the clubs?

04:43PM 5 A. Yes.

04:43PM 6 **MR. SINGER:** Just for clarification, are we back on
04:43PM 7 redirect now?

04:43PM 8 **MR. COOPER:** Crossing.

04:43PM 9 **THE COURT:** I'm -- okay, he's still crossing.

04:43PM 10 **MR. SINGER:** Can we approach?

04:43PM 11 **THE COURT:** Sure.

04:43PM 12 (Sidebar discussion held on the record.)

04:43PM 13 **MR. SINGER:** That's the reason I interrupted, Judge,
04:43PM 14 is because it's a leading objection.

04:43PM 15 If we're back on redirect, which I think we are, all
04:43PM 16 these questions start to go to information I solicited not
04:43PM 17 having to do with anything about an opinion or reputation
04:43PM 18 regarding truthfulness, but with regard to what Ms. R.A.
04:43PM 19 testified to on direct.

04:43PM 20 So if we're back into that area, which I think we
04:43PM 21 squarely are, then we've got to go back into -- he's direct
04:43PM 22 and cross.

04:43PM 23 **THE COURT:** It wasn't leading.

04:43PM 24 **MR. COOPER:** This is --

04:43PM 25 **THE COURT:** I didn't think the questions were

04:43PM 1 leading.

04:43PM 2 **MR. COOPER:** I think my tone of voice invokes
04:43PM 3 objection sometimes, but I'm --

04:44PM 4 **THE COURT:** Don't lead now.

04:44PM 5 **MR. COOPER:** Well, Judge, I would just -- there's a
04:44PM 6 line of cross-examination about -- so, he evokes this
04:44PM 7 reputation, we talk about access to Pharaoh's when there was
04:44PM 8 access to Pharaoh's --

04:44PM 9 **THE COURT:** Right.

04:44PM 10 **MR. COOPER:** -- with whether she knows it or not,
04:44PM 11 whether she knows it or not, this jury's heard testimony from
04:44PM 12 lots of witnesses about stuff that's gone on at Pharaoh's with
04:44PM 13 respect to drug addiction. So I'm exploring that now in the
04:44PM 14 context of my cross-examination of her that I didn't expect to
04:44PM 15 be doing today. But this is where we were. I don't have a
04:44PM 16 cross written out because I found out about it 25 minutes ago.

04:44PM 17 **THE COURT:** We're ending at 5, so --

04:44PM 18 **MR. COOPER:** Okay.

04:44PM 19 **THE COURT:** If we've got to bring her back Monday,
04:44PM 20 we'll bring her back Monday.

04:44PM 21 **MR. COOPER:** Okay.

04:44PM 22 (End of sidebar discussion.)

04:44PM 23 **BY MR. COOPER:**

04:44PM 24 Q. You've seen signs of somebody that's heavily using drugs
04:44PM 25 when you've worked in these clubs, right?

04:44PM

1 A. Yes.

04:44PM

2 Q. That's something that happens?

04:44PM

3 A. Yes.

04:44PM

4 Q. You've seen people distributing drugs in those contests,
5 right?

04:44PM

6 A. In other clubs?

04:44PM

7 Q. In clubs, yeah.

04:44PM

8 A. Yes.

04:45PM

9 Q. Okay. So if Ms. Nigro said that women use drugs at
10 Pharaoh's, you wouldn't have any reason to disagree with
11 that, right?

04:45PM

12 **MR. SINGER:** Objection to the hearsay.

04:45PM

13 **THE COURT:** Sus --

04:45PM

14 **MR. COOPER:** So I'm not asking her to --

04:45PM

15 **THE COURT:** Hang on.

04:45PM

16 **MR. COOPER:** -- elicit an out-of-court statement.

04:45PM

17 **THE COURT:** Yeah. Overruled. I'll allow that.

04:45PM

18 **BY MR. COOPER:**

04:45PM

19 Q. If Ms. Nigro said women who worked at Pharaoh's used
20 drugs, you wouldn't have any reason to disagree with that,
21 right?

04:45PM

22 A. No.

04:45PM

23 Q. If she said women who worked at Pharaoh's had opiate
24 addictions, you wouldn't have any reason to disagree with
25 that, right?

04:45PM

04:45PM

23 Q. You told the jury earlier that people who work at these
24 clubs are -- are put in uncomfortable situations with men
25 when I was asking you questions on direct; do you --

04:46PM 1 A. What does "vicarious" mean? I mean, what are you trying
04:46PM 2 to ask me?

04:46PM 3 Q. No, precarious.

04:46PM 4 A. What -- okay, so what does that entail?

04:46PM 5 Q. Dangerous. Uncomfortable.

04:46PM 6 A. Sure, uncomfortable. Being a stripper's uncomfortable.

04:46PM 7 Q. That's what I'm getting at, ma'am.

04:46PM 8 A. Okay.

04:46PM 9 Q. Katrina Nigro, if she testified, or if she told you that
04:46PM 10 Joe Bongiovanni and Peter Gerace were friends, you wouldn't
04:46PM 11 have any reason to disagree with that either, right, ma'am?

04:46PM 12 A. No.

04:46PM 13 **MR. COOPER:** Okay. I'm good. Thank you, Judge.

04:47PM 14

04:47PM 15 **RECROSS-EXAMINATION BY MR. SINGER:**

04:47PM 16 Q. Ms. Nigro, the government challenged your opinion
04:47PM 17 regarding -- sorry.

04:47PM 18 Ms. R.A., the government challenged your opinion
04:47PM 19 regarding Ms. Nigro, and I want to get into a couple reasons
04:47PM 20 why you hold that opinion. Okay?

04:47PM 21 A. Yes.

04:47PM 22 Q. Did Ms. Nigro tell you and others that she --

04:47PM 23 **MR. COOPER:** Objection. Specific instances are
04:47PM 24 improper, Judge.

04:47PM 25 **MR. SINGER:** Unless the witness is impeached.

04:47PM 1 **THE COURT:** Okay. We are going to quit for the day,
04:47PM 2 folks. So remember my instructions about not making up your
04:48PM 3 mind about anything until the case has been given to you to
04:48PM 4 deliberate. Don't communicate about the case with anyone.

04:48PM 5 Again, this is a weekend, so you'll be together with
04:48PM 6 family, don't tell them anything about this case. Don't use
04:48PM 7 tools of technology to try to learn anything about the case or
04:48PM 8 to communicate about the case. If there's any news coverage
04:48PM 9 about the case whatsoever, in the newspaper, on the radio, on
04:48PM 10 TV, on the internet, don't watch or listen or read that while
04:48PM 11 the case is in progress. You'll be able to read plenty when
04:48PM 12 it's over, if there is any, but don't look for anything now.
04:48PM 13 And if you see anything inadvertently, let me know about it.
04:48PM 14 Okay?

04:48PM 15 We'll see you Monday at 9:30. Monday, Tuesday, at
04:48PM 16 9:30. And then Friday at 9:30.

04:48PM 17 But Wednesday and Thursday we will be down. Okay?

04:48PM 18 Everybody have a great weekend, and I guess that's
04:49PM 19 it. Thanks.

04:49PM 20 (Jury excused at 4:49 p.m.)

04:49PM 21 **THE COURT:** Okay. So, I understand -- let's excuse
04:49PM 22 the witness.

04:49PM 23 **MR. COOPER:** I agree.

04:49PM 24 **THE COURT:** I don't want to do argument now, but
04:49PM 25 ma'am, you can step down.

04:49PM

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THE WITNESS: Thank you.

04:49PM

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THE COURT: You're not to talk to anybody about your

04:49PM

3

testimony at all --

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THE WITNESS: Yes, sir.

04:49PM

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THE COURT: -- between now and when you come back on

04:49PM

6

Monday, okay?

04:49PM

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THE WITNESS: Yep.

04:49PM

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THE COURT: Okay?

04:49PM

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THE WITNESS: Thank you.

04:49PM

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(Witness excused at 4:49 p.m.)

04:49PM

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MR. TRIPI: What time Monday, Judge?

04:49PM

12

THE COURT: 9:30.

04:50PM

13

So a couple things. Do you guys want to brief this?

04:50PM

14

MR. COOPER: So I guess I'll beat the same drum that

04:50PM

15

I've been beating since the beginning of this trial, which is

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16

we can have an opportunity to brief things for the Court and

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not argue them for 20 or 30 minutes at the sidebar when we

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18

know that issues are going to arise. And over and over again

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19

during the course of the trial, the defense has chosen to

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20

operate by trial by surprise --

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21

THE COURT: So let me go back and ask the question:

04:50PM

22

Do you want to brief this?

04:50PM

23

MR. COOPER: Yes.

04:50PM

24

THE COURT: Okay. By Sunday at midnight?

04:50PM

25

MS. CHALBECK: Works for us, Judge. We'll try to get

04:50PM 1 it to you sooner.

04:50PM 2 **THE COURT:** Simultaneous briefs.

04:50PM 3 **MR. SINGER:** Yeah, that's fine, Judge. Just give me
04:50PM 4 a deadline.

04:50PM 5 **MR. TRIPI:** Judge, the question is, I just want to
04:51PM 6 frame the question, the question is now that Mr. Singer is
04:51PM 7 back up on his recross --

04:51PM 8 **MR. COOPER:** Redirect.

04:51PM 9 **MR. TRIPI:** -- redirect, or whatever it is, can he
04:51PM 10 get into specific instances of conduct that bolster the
04:51PM 11 opinion testimony as to Ms. Nigro's credibility that he's
04:51PM 12 elicited from R.A. That was --

04:51PM 13 **THE COURT:** Because, because it's -- because her
04:51PM 14 credibility has been attacked on that --

04:51PM 15 **MR. TRIPI:** Yeah.

04:51PM 16 **THE COURT:** -- on cross.

04:51PM 17 **MR. TRIPI:** So can -- but he's asking not for
04:51PM 18 specific instances of conduct to bolster Ms. R.A.'s
04:51PM 19 credibility, he's asking for specific instances of conduct to
04:51PM 20 bolster her opinion testimony about Ms. Nigro. That's the
04:51PM 21 objection, and that's what we'll be briefing.

04:51PM 22 **MR. SINGER:** Well, I phrased it a different way.

04:51PM 23 She offered her opinion about Ms. Nigro's
04:51PM 24 untruthfulness. She also offered her opinion regarding the
04:51PM 25 reputation of Ms. Nigro for her untruthfulness.

On cross-examination, the government did two things:
1, is that they attacked her credibility on the basis
of her opinion on bias grounds.

Number 2, they offered multiple instances of specific
acts of what they would believe are truthful statements
that -- that the witness would not disagree were untruthful.

That is what I believe opened the door, Judge, to
specific acts that I can get into regarding her opinion.

I didn't open that door. I actually leveled some
objections to some of those questions. That's why the door is
open.

MR. COOPER: Judge, I would respond to that that my
questions were about the -- her ability to make certain
perceptions when she was associated with Peter, when she was
associated with Katrina, if she was invited to certain events.
That's completely extraneous to what she wants -- what would
like to have this witness talk about, which are totally
unrelated things where she thinks --

THE COURT: And you can put that in your papers, and
Mr. Singer can argue to the contrary in his papers.

MR. COOPER: Got it. Understood.

THE COURT: The only other thing I wanted to raise
was so we had that go-around on the coconspirator statement,
that whole big go-around. And there was -- and you might want
to look at the transcript, Mr. Singer and Mr. MacKay, because

04:53PM 1 at the beginning of that, there was a question and an answer
04:53PM 2 and an objection that was never really ruled on. And I think
04:53PM 3 that the answer that came out may be contrary to the ruling
04:53PM 4 that I made. So we may need to do a curative instruction on
04:53PM 5 that.

04:53PM 6 So, Ann, if you can get them the transcript of that,
04:53PM 7 just the beginning, before that whole roll-around with the
04:53PM 8 long argument that we had on the -- the coconspirator
04:53PM 9 statement, whether it came in as a coconspirator statement,
04:53PM 10 whether it came in as a statement against penal interests, the
04:53PM 11 very beginning of it.

04:53PM 12 **THE REPORTER:** Sure, Judge.

04:53PM 13 **THE COURT:** The question that triggered that had an
04:54PM 14 answer that I think may be problematic. Okay? So take a look
04:54PM 15 at that, and we can decide what to do about it.

04:54PM 16 **MR. SINGER:** Okay, Judge.

04:54PM 17 **THE COURT:** Okay? Anything else from the government?

04:54PM 18 **MR. TRIPI:** No, thank you, Judge.

04:54PM 19 **THE COURT:** Anything from the defense?

04:54PM 20 **MR. SINGER:** No, Your Honor. Have a good weekend.

04:54PM 21 **THE CLERK:** All rise.

04:54PM 22 (Proceedings concluded at 4:54 p.m.)

23 (Excerpt concluded at 4:54 p.m.)

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CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court for
the Western District of New York on September 13, 2024.

s/ Ann M. Sawyer

Ann M. Sawyer, FCRR, RPR, CRR
Official Court Reporter
U.S.D.C., W.D.N.Y.

TRANSCRIPT INDEX**EXCERPT - EXAMINATION OF PROTECTED WITNESS 6, R.A.****SEPTEMBER 13, 2024****W I T N E S S****P A G E****R.A.**

2

DIRECT EXAMINATION BY MR. COOPER:

2

VOIR DIRE EXAMINATION BY MR. COOPER:

43

VOIR DIRE EXAMINATION BY MR. SINGER:

45

(CONT'D) DIRECT EXAMINATION BY MR. COOPER:

57

CROSS-EXAMINATION BY MR. SINGER:

61

CROSS-EXAMINATION BY MR. COOPER (Gov Adopted):

80

RECROSS-EXAMINATION BY MR. SINGER:

103